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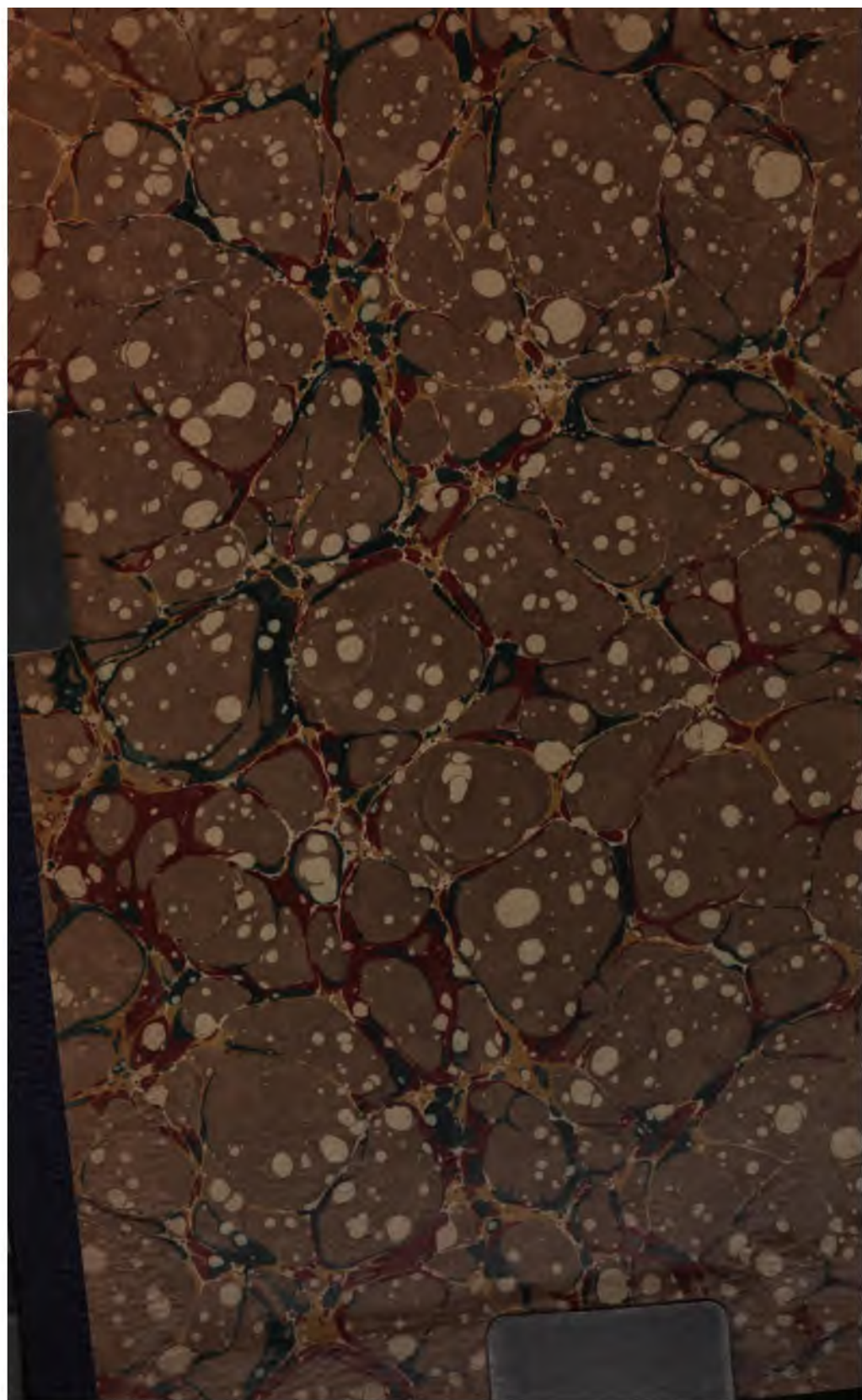
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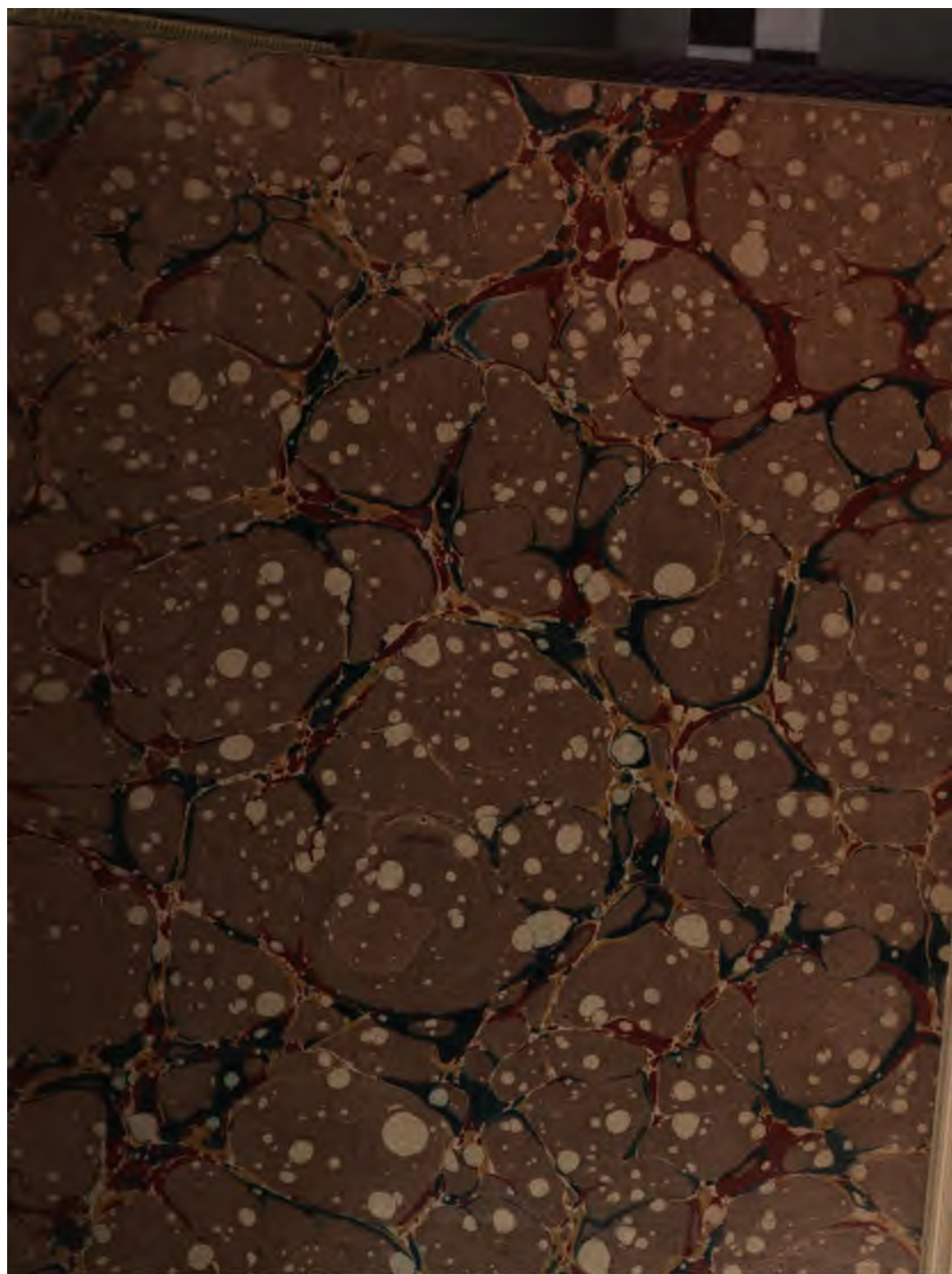
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# THE YALE REVIEW

A QUARTERLY JOURNAL FOR THE SCIENTIFIC DISCUSSION  
OF ECONOMIC, POLITICAL, AND SOCIAL QUESTIONS.

Vol. XIX. No. I.

May, 1910

## CONTENTS

	PAGE
<b>COMMENT, - - - - -</b>	<b>I</b>
William Graham Sumner. <i>By Henry W. Farnam, J. C. Schwab, Irving Fisher, Clive Day, Albert G. Keller, Richard T. Ely</i>	
<b>THE HOLDING CORPORATION—II, - - - - -</b>	<b>13</b>
<i>Maurice H. Robinson</i>	
<b>VICTORIAN WAGES BOARDS AND THE NEW ZEALAND CONCILIATION-ARBITRATION ACT, - - - - -</b>	<b>32</b>
<i>Paul Kennaday</i>	
<b>LEGAL LIMITATIONS UPON INTERFERENCE WITH THE CONTRACT RIGHTS OF A COMPETITOR, - - - - -</b>	<b>55</b>
<i>Mason Trowbridge</i>	
<b>SOME IMMIGRATION DIFFERENCES, - - - - -</b>	<b>79</b>
<i>Henry Pratt Fairchild</i>	
<b>BOOK REVIEWS, - - - - -</b>	<b>98</b>
Coolidge's Chinese Immigration; Devine's Social Forces; Par- sons's Responsibility for Crime; Saint-Léon's Cartells et Trusts; Errera's Traité de Droit Public Belge; Haines's Conflict over Judicial Powers in the United States.	
<b>RECENT LITERATURE, - - - - -</b>	<b>108</b>

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135 ELM STREET, NEW HAVEN, CONN.

LONDON	BERLIN	PARIS	ROME
EDWARD ARNOLD	PUTTKAMMER UND MÜHLBRECHT	E. LEROUX	E. LORSCHER

SINGLE NUMBERS, 75c.

PER ANNUM, \$3.00.

*Entered at the Post-Office, New Haven, Conn., as Second-Class Mail Matter*



# THE YALE REVIEW

A QUARTERLY JOURNAL FOR THE SCIENTIFIC DISCUSSION OF  
ECONOMIC, POLITICAL, AND SOCIAL QUESTIONS.

EDITED BY PROFESSORS IN

POLITICAL SCIENCE AND HISTORY

YALE UNIVERSITY,

NEW HAVEN, CONN.

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The REVIEW is edited by Professors HENRY WALCOTT FARNAM,  
JOHN CHRISTOPHER SCHWAB, IRVING FISHER, GUY STEVENS CAL-  
LENDER, HENRY CROSBY EMERY, CLIVE DAY, ALBERT GALLOWAY  
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The subscription price is \$3.00 per year. Subscriptions may  
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PUBLISHED BY

YALE PUBLISHING ASSOCIATION,

(INCORPORATED.)

135 ELM STREET, NEW HAVEN, CONN.

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DISCUSSION OF ECONOMIC, POLITICAL  
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VOLUME NINETEENTH

MAY, 1910, TO FEBRUARY, 1911

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SUBJECTS.

	Page
William Graham Sumner. ( <i>Comment.</i> ).....	1
The Holding Corporation—II. ( <i>Maurice H. Robinson.</i> ).....	13
Victorian Wages Boards and the New Zealand Conciliation-Arbitration Act. ( <i>Paul Kennaday.</i> ) .....	32
Legal Limitations upon Interference with the Contract Rights of a Com- petitor. ( <i>Mason Trowbridge.</i> ) .....	55
Some Immigration Differences. ( <i>Henry Pratt Fairchild.</i> ).....	79
The New Leadership in Legislation. ( <i>Comment.</i> ).....	113
Arrested Development of Legislative Organs. ( <i>Comment.</i> ).....	116
Some Items in the Presidential Program. ( <i>Comment.</i> ).....	118
A Better Control of Public Expenditure. ( <i>W. M. J. Williams.</i> ).....	119
Capitalization and Market Value. ( <i>H. J. Davenport.</i> ).....	132
Unionism and the Courts. ( <i>George Gorham Groat.</i> ) .....	144
The Second Class Mail Rates. ( <i>Charles William Burrows.</i> ).....	159
Typical Commercial Crises Versus a Money Panic. ( <i>Harry G. Brown.</i> )	168
The United States Steel Corporation and the Panic of 1907. ( <i>Note. G.</i> <i>B. Gould.</i> ) .....	177
The Lugano Meeting. ( <i>Comment.</i> ).....	217
The Berlin Centenary. ( <i>Comment.</i> ).....	220
Workingmen's Insurance in the United States. ( <i>Comment.</i> ).....	224
The Religious Question in Spain. ( <i>Luis Garcia Guijarro.</i> ).....	226
The Problem of Sick and Accident Insurance in Switzerland. ( <i>O. H.</i> <i>Jenny.</i> ) .....	235
Work, Accidents, and the Law. ( <i>Howell Cheney.</i> ).....	255
Economic Phases of the Railroad Rate Controversy. ( <i>A. M. Sakolski.</i> )	268
The Statistical Work of the Federal Government—I. ( <i>Julius H. Parme-</i> <i>lee.</i> ) .....	289
Editorial Note .....	337
A Nation in the Making. ( <i>A. L. Smith.</i> ).....	339
Taxation of Corporate Franchises in Massachusetts. ( <i>Charles A.</i> <i>Andrews.</i> ) .....	357
The Statistical Work of the Federal Government—II. ( <i>Julius H. Parme-</i> <i>lee.</i> ) .....	374
Rhine and Mississippi River Terminals. ( <i>E. J. Clapp.</i> ).....	392
The British Election Address. ( <i>George L. Fox.</i> ).....	398



## WRITERS.

	Page
ANDREWS, CHARLES A. Taxation of Corporate Franchises in Massachusetts .....	357
BROWN, HARRY G. Typical Commercial Crises Versus a Money Panic...	168
BURROWS, CHARLES WILLIAM. The Second Class Mail Rates.....	159
CHENEY, HOWELL. Work, Accidents, and the Law.....	255
CLAPP, E. J. Rhine and Mississippi River Terminals.....	392
DAVENPORT, H. J. Capitalization and Market Value.....	132
DAY, CLIVE. William Graham Sumner: The Idealist. ( <i>Comment.</i> )....	7
ELY, RICHARD T. William Graham Sumner: The Veteran. ( <i>Comment.</i> ) .....	11
FAIRCHILD, HENRY PRATT. Some Immigration Differences.....	79
FARNAM, HENRY W. William Graham Sumner: The Pioneer. ( <i>Comment.</i> ) .....	1
FISHER, IRVING. William Graham Sumner: The Inspirer. ( <i>Comment.</i> )	5
FOX, GEORGE L. The British Election Address.....	398
GOULD, G. B. The United States Steel Corporation and the Panic of 1907. ( <i>Note.</i> ) .....	177
GROAT, GEORGE GORHAM. Unionism and the Courts.....	144
GUIJARRO, LUIS GARCIA. The Religious Question in Spain.....	226
JENNY, O. H. The Problem of Sick and Accident Insurance in Switzerland .....	235
KELLER, ALBERT G. William Graham Sumner: The Man. ( <i>Comment.</i> )	9
KENNADAY, PAUL. Victorian Wages Boards and the New Zealand Conciliation-Arbitration Act .....	32
PARMELEE, JULIUS H. The Statistical Work of the Federal Government—I .....	289
—, —, —. The Statistical Work of the Federal Government—II .....	374
ROBINSON, MAURICE H. The Holding Corporation—II.....	13
SAKOLSKI, A. M. Economic Phases of the Railroad Rate Controversy..	268
SCHWAB, J. C. William Graham Sumner: The Teacher. ( <i>Comment.</i> )..	4
SMITH, A. L. A Nation in the Making.....	339
TROWBRIDGE, MASON. Legal Limitations upon Interference with the Contract Rights of a Competitor.....	55
WILLIAMS, W. M. J. A Better Control of Public Expenditure.....	119

# Contents.

v

## BOOKS RECEIVED AND REVIEWED.

	Page
BOTSFORD, GEORGE WILLIS. The Roman Assemblies, from Their Origin to the End of the Republic. ( <i>E. L. Durfee.</i> ).....	438
BRACE, HARRISON H. Gold Production and Future Prices. ( <i>Harry G. Brown.</i> ) .....	328
BROOKS, ROBERT C. Corruption in American Politics and Life. ( <i>Henry Pratt Fairchild.</i> ) .....	445
BUSHNELL, DAVID I., JR. The Choctaw of Bayou Lacombe, St. Tammany Parish, Louisiana. ( <i>Recent Literature.</i> ) .....	334
BUTLER, ELIZABETH BEARDSLEY. Women and the Trades. ( <i>J. Lynn Barnard.</i> ) .....	208
CASSON, HERBERT N. The History of the Telephone. ( <i>Recent Literature.</i> ) .....	454
CHANCE, WILLIAM. Poor Law Reform. Via Tertia. The Case for the Guardians. ( <i>David I. Green.</i> ).....	207
Commissioner of Corporations, Department of Commerce and Labor. Transportation by Water in the United States. ( <i>Recent Literature.</i> )	453
COMMONS, JOHN R. A Documentary History of American Industrial Society. Edited by John R. Commons, Ulrich B. Phillips, Eugene A. Gilmore, Helen L. Sumner, and John B. Andrews. Vols. I and II, "Plantation and Frontier," by Ulrich B. Phillips. Vols. III and IV, "Labor Conspiracy Cases, 1806-1842," by John R. Commons and Eugene A. Gilmore. ( <i>Max Farrand.</i> ).....	188
Vols. V and VI, "Labor Movement, 1820-1840," edited by John R. Commons and Helen L. Sumner. Vols. VII and VIII, "Labor Movement, 1840-1860," edited by John R. Commons. ( <i>Max Farrand.</i> )....	309
Vol. IX, "Labor Movement, 1860-1880," edited by John R. Commons and John B. Andrews. ( <i>Max Farrand.</i> ).....	434
CONANT, CHARLES A. A History of Modern Banks of Issue. With an Account of the Economic Crises of the Nineteenth Century and the Crisis of 1907. ( <i>Recent Literature.</i> ).....	213
COOLIDGE, MARY ROBERTS. Chinese Immigration. ( <i>F. W. Williams.</i> )....	98
DAVIS, WILLIAM STEARNS. An Outline History of the Roman Empire 44 B. C. to 378 A. D. ( <i>Recent Literature.</i> ).....	456
DE LEENER, G. L'Organisation Syndicale des Chefs d'Industrie. ( <i>Francis Walker.</i> ) .....	318
DEVINE, EDWARD T. Social Forces. ( <i>Henry C. Metcalf.</i> ).....	101
DIENSTAG, PAUL. Die deutsche Uhrenindustrie. ( <i>Recent Literature.</i> )....	331
DIXON, FRANK HAIGH. A Traffic History of the Mississippi River System. ( <i>E. J. Clapp.</i> ).....	433
DOWNNEY, E. H. History of Labor Legislation in Iowa. ( <i>Arthur Sargent Field.</i> ) .....	418
EASTMAN, CRYSTAL. Work, Accidents, and the Law. ( <i>Howell Cheney.</i> )	255
EAVES, LUCILE. A History of California Labor Legislation. ( <i>Arthur J. Todd.</i> ) .....	420



	Page
ELLWOOD, CHARLES A. Sociology and Modern Social Problems. ( <i>J. E. Cutler.</i> ) .....	423
ERRERA, PAUL. Traité de Droit Public Belge. ( <i>Arthur L. Corbin.</i> )....	105
ESCHER, FRANKLIN. Elements of Foreign Exchange. ( <i>Recent Literature.</i> ) .....	458
FEWKES, J. W. Antiquities of the Mesa Verde National Park. Spruce-tree House. ( <i>Recent Literature.</i> ) .....	333
FITE, EMERSON DAVID. Social and Industrial Conditions in the North during the Civil War. ( <i>Frederic L. Paxson.</i> ).....	205
FOLWELL, WILLIAM WATTS. University Addresses. ( <i>Richard T. Ely.</i> )..	197
GALLOWAY, LEE, AND GEORGE BURTON HOTCHKISS AND JAMES MAVOR. Organization, Correspondence, Transportation. ( <i>Avard L. Bishop.</i> )	425
GARNER, JAMES WILFORD. Introduction to Political Science. ( <i>Allen Johnson.</i> ) .....	443
GILLETTE, KING CAMP. World Corporation. ( <i>Recent Literature.</i> ).....	451
GREENDLINGER, LEO. Accounting Theory and Practice. ( <i>Avard L. Bishop.</i> ) .....	425
GREGORY, HERBERT ERNEST, AND ALBERT GALLOWAY KELLER AND AVARD LONGLEY BISHOP. Physical and Commercial Geography. ( <i>Lincoln Hutchinson.</i> ) .....	323
GRICE, J. WATSON. National and Local Finance. ( <i>Recent Literature.</i> )..	459
HAINES, CHARLES GROVE. The Conflict over Judicial Powers in the United States to 1870. ( <i>Arthur L. Corbin.</i> ).....	107
HALE, EDWARD EVERETT. The Great Design of Henry IV, from the Memoirs of the Duke of Sully; and the United States of Europe. ( <i>Recent Literature.</i> ) .....	455
HANEY, LEWIS H. A Congressional History of Railways in the United States. Vol. II. ( <i>Recent Literature.</i> ) .....	453
HAYES, CARLTON HUNTLEY. An Introduction to the Sources relating to the Germanic Invasions. ( <i>Recent Literature.</i> ).....	456
HAZEN, CHARLES DOWNER. Europe Since 1815. ( <i>Charles Seymour.</i> )...	447
HISTORY SHEET OR CASE-PAPER SYSTEM, THE. ( <i>Recent Literature.</i> ).....	110
HOLCOMBE, A. N. Public Ownership of Telephones on the Continent of Europe. ( <i>F. R. F.</i> ) .....	431
HOWARD, EARL DEAN, in collaboration with Joseph French Johnson. Money and Banking. ( <i>Recent Literature.</i> ) .....	457
INGENBLEEK, J. Impôts Directs et Indirects sur le Revenu. ( <i>Recent Literature.</i> ) .....	459
JEFFERSON, HOWARD McNAYR, AND FRANKLIN ESCHER. Banking Practice and Foreign Exchange. ( <i>Recent Literature.</i> ).....	457
JOHNSTON, ALEXANDER. History of American Politics. ( <i>Recent Literature.</i> ) .....	333
JOHNSTON, R. M. The French Revolution. A Short History. ( <i>Recent Literature.</i> ) .....	455
JORDAN, DAVID STARR. The Fate of Ictodorum. Being the Story of a City made Rich by Taxation. ( <i>Recent Literature.</i> ).....	110
JORDAN, L. H. Comparative Religion: A Survey of its Recent Literature. ( <i>Recent Literature.</i> ) .....	334

# Contents.

vii

	Page
KELLOGG, JAMES L. Shell-Fish Industries. ( <i>Recent Literature</i> ).....	451
KENT, CHARLES FOSTER. The Sermons, Epistles and Apocalypses of Israel's Prophets from the Beginning of the Assyrian Period to the End of the Maccabean Struggle. ( <i>Ernest F. McGregor</i> ).....	448
LA MONTE, ROBERT RIVES, AND HENRY L. MENCKEN. "Men versus The Man." ( <i>Sidney A. Reeve</i> ).....	203
LIEFMANN, ROBERT. Kartelle und Trusts. ( <i>Maurice H. Robinson</i> ).....	427
LOUGH, WILLIAM H., JR. Corporation Finance. ( <i>Avard L. Bishop</i> )....	425
MCCAIN, C. C. The Diminished Purchasing Power of Railway Earnings. ( <i>Harry G. Brown</i> ) .....	201
MCCARTY, DWIGHT G. The Territorial Governors of the Old Northwest. ( <i>Recent Literature</i> ) .....	454
MCPHERSON, LOGAN G. Transportation in Europe. ( <i>Recent Literature</i> ).....	332
Manual of Style. ( <i>Recent Literature</i> ).....	214
MEADE, EDWARD SHERWOOD. Economics. ( <i>C. W. A. Veditz</i> ).....	322
MEYER, HERMANN HENRY BERNARD. Select list of References on Sugar, chiefly in its Economic Aspects. ( <i>Recent Literature</i> ).....	452
MORRIS, WILLIAM ALFRED. The Frankpledge System. ( <i>Geo. E. Woodbine</i> ) .....	436
MURPHY, EDGAR GARDNER. The Basis of Ascendancy. ( <i>Thomas Jesse Jones</i> ) .....	314
NIEBOER, H. J. Slavery as an Industrial System. ( <i>Recent Literature</i> )..	461
OSTROGORSKI, M. Democracy and the Party System in the United States: a Study in Extra-Constitutional Government. ( <i>Allen Johnson</i> ) .....	440
PARSONS, PHILIP A. Responsibility for Crime. ( <i>Maurice Parmelee</i> )....	103
PAXSON, FREDERIC LOGAN. The Last American Frontier. ( <i>Recent Literature</i> ) .....	109
PEABODY, FRANCIS GREENWOOD. The Approach to the Social Question. ( <i>Recent Literature</i> ) .....	108
PETERS, JOHN P. Modern Christianity, or the Plain Gospel Modernly Expounded. ( <i>Recent Literature</i> ) .....	213
PHILLIPS, J. B. Freight Rates and Manufactures in Colorado. ( <i>Recent Literature</i> ) .....	212
PUTNAM, GEORGE HAVEN. Abraham Lincoln, the People's Leader in the Struggle for National Existence. ( <i>Recent Literature</i> ) .....	109
RHODES, JAMES FORD. Historical Essays. ( <i>Recent Literature</i> ).....	211
ROBINSON, EDWARD V. Commercial Geography. ( <i>A. G. K.</i> ).....	439
ROGERS, JAMES FREDERICK. Life and Health. ( <i>Recent Literature</i> ).....	450
SAINT-LÉON, ET MARTIN. Cartells et Trusts. ( <i>Maurice H. Robinson</i> )..	104
SCHAPIRO, JACOB SALWYN. Social Reform and the Reformation. ( <i>Recent Literature</i> ) .....	211
SEAGER, HENRY ROGERS. Social Insurance a Program of Social Reform. ( <i>Recent Literature</i> ) .....	450
SELIGMAN, EDWIN R. A. The Shifting and Incidence of Taxation. Third Edition. ( <i>Recent Literature</i> ).....	458
——— ———. Principles of Economics. Fourth Edition. ( <i>Recent Literature</i> ) .....	460

	Page
SMALL, ALBION W. The Meaning of Social Science. ( <i>Recent Literature.</i> ) .....	460
SMITH, ADAM. An Inquiry into the Nature and Causes of the Wealth of Nations. ( <i>Recent Literature.</i> ) .....	214
STEFFENS, LINCOLN. Upbuilders. ( <i>Recent Literature.</i> ) .....	110
STIMSON, FREDERIC JESUP. Popular Law-Making. ( <i>Arthur L. Corbin.</i> ) .....	442
SURFACE, GEORGE THOMAS. The Story of Sugar. ( <i>Recent Literature.</i> ) ..	452
SWANSON, WILLIAM WALKER. The Establishment of the National Banking System. ( <i>Recent Literature.</i> ) .....	460
TALMEY, B. S. Genesis. ( <i>Recent Literature.</i> ) .....	332
TROITZSCH, FRITZ. Das Seilergewerbe in Deutschland. ( <i>Recent Literature.</i> ) .....	331
VEILLER, LAWRENCE. Housing Reform. ( <i>H. S. B.</i> ) .....	199
VOGELSTEIN, THEODOR. Organisationsformen der Eisenindustrie und der Textilindustrie in England und Amerika. ( <i>Recent Literature.</i> ).....	454
WARING, LUTHER HESS. The Political Theories of Martin Luther. ( <i>William Ernest Hocking.</i> ) .....	444
WATKINS, EDGAR. Shippers and Carriers of Interstate Freight. ( <i>Frank Haigh Dixon.</i> ) .....	202
WELLS, H. G. First and Last Things: A Confession of Faith and a Rule of Life. ( <i>Recent Literature.</i> ) .....	334
WING, YUNG. My Life in China and America. ( <i>F. W. Williams.</i> ).....	192
WOLFF, HENRY W. People's Banks. A Record of Social and Economic Success. ( <i>Recent Literature.</i> ) .....	459
WRIGHT, CHESTER WHITNEY. Wool-growing and the Tariff. A Study in the Economic History of the United States. ( <i>C. D.</i> ).....	429

THE  
YALE REVIEW.

MAY, 1910.

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COMMENT.

WILLIAM GRAHAM SUMNER.

*The Pioneer; The Teacher; The Inspirer; The Idealist; The Man; The Veteran.*

The death of Professor Sumner marks the close of an epoch, not only in economic and sociological instruction at Yale, but also in the economic thought of the country. The editors have accordingly thought it wise to print in the place of the ordinary editorial comment, a series of short, signed articles, giving expression to the views held of Professor Sumner by the writers. Five of these are written by editors of the REVIEW. The sixth was sent unsolicited by Professor Ely. Those who are familiar with the history of economic thought in our country during the past thirty years, will quickly see the significance of what he says, and appreciate the spirit which prompted him to say it.

*The Pioneer.*

When Professor Sumner was called to the chair of Political and Social Science at Yale College, in 1872, there were very few professional economists in the country. Francis A. Walker came to the Sheffield Scientific School in the same year. Professor Dunbar began his duties at Harvard the year before. Professor Perry still filled at Williams College the chair which he had held since 1854. Besides these there were few, if any, men in the country who could be said to have taken up the teaching of economics as a profession. They were the pioneers in



the remarkable expansion of economic study which took place in our country in the decade after the Civil War. In this small group of exceptional men, Sumner at once occupied a prominent position.

In order to realize just what that position meant, we must briefly recall the environment, both economic and academic, in which he found himself. The Civil War had saved the Union, but left among its legacies a set of ugly economic problems. In 1872 we were still suffering from a depreciated paper currency, and our emergence from this position was beset with difficulties. Soon afterwards, silver began to decline in value, and there arose the silver inflation movement at home, and the international bi-metallic movement. Protection had become a veritable fetish for most members of the dominant party, and free trade was associated in their minds with treason and rebellion. Labor disturbances were beginning, and the excesses of the International Workingmen's Association had given many people a well-founded terror of the possibilities of Trade Unions.

Our colleges were just thinking of liberalizing the curriculum and opening the way to the new subjects which were being developed. Yale College still adhered to the old system. There were at that time but two electives in the entire four years' course. Though a graduate department had been established as early as 1846, there were very few graduate students excepting in the Sheffield Scientific School, and practically no graduate courses offered in Economics or Sociology. There was as little opportunity for specialization on the part of the younger instructors as there was on the part of the students. When new tutors were appointed, they were expected to be ready to teach either Latin, Greek or Mathematics and had to take whichever one of these subjects might be left, after the older tutors had made their selection. Hence Mr. Sumner, when he came to the college as tutor in 1866, had to teach first, mathematics, and afterwards, Greek.

When he was called to the chair of Political and Social Science and taught his subject with enthusiasm and vigor, the effect upon the student body was marvelous. We had no one who so stimulated our thoughts and so interested us. We felt that he put

new interpretations upon history and upon the facts of everyday life; a new world of ideas was opened to us.

He not only inspired his classes, but he at once became known to the public by his attacks upon inflation and protection. His advocacy of free trade harmonized naturally with the policy of *laissez faire* which he set forth in an extreme form in his "Social Classes." He was a magnificent fighter. While he hit hard, he was always fair and frank. He left no one in doubt as to where he stood.

But his vigorous blows produced antagonism. The protectionists were outraged and incensed at his advocacy of free trade. The greenbackers, silver men and bi-metallists could not endure his advocacy of the gold standard. Many of the younger economists, especially those who began to return from the German Universities in the latter years of the decade and the first years of the following, felt that he was altogether too arbitrary and dogmatic in his advocacy of *laissez faire*, and did not do justice to the movements for reform by legislation which were then beginning in Germany. Especial stress was therefore laid by the founders of the American Economic Association upon the efficacy of government action and upon the importance of a careful study of history.

In view of the controversies of those days, it is instructive to look back over the course of events which followed. After many years of struggle, our country first adopted specie payments, and much later the gold standard. Protection is still entrenched on our statute books, but it is on the defensive, and a large section of the Republican Party is ready to point out its abuses and demand a reform. The contest of the schools in economics has been followed by a remarkable metamorphosis. Sumner, the "dogmatist," has produced a long series of valuable works, beginning with the "History of the American Currency," almost every one of which is historical in character; on the other hand, not a few of those who were active in forming the American Economic Association have turned their attention more and more to pure theory. Thus in the case of the two important public reforms for which he stood we can now see clearly that Sumner was ahead of his time. On the question of economic method, he



was misunderstood. Even with regard to government intervention, in which most of his strongest friends would now hold his position to have been extreme, his vigor stimulated thought, and represented a healthy spirit of independence. His hatred of shams, his eager pursuit of the truth, not only inspired his pupils in their scientific work, but must be held to have exercised no small influence on the growth of political independence throughout the country, and on the breaking down of that narrow party spirit which is often the chief asset of political corruptionists.

In his teaching, in his research work, and in his public influence, he was essentially a pioneer. He possessed the strong convictions, the splendid physique, and the militant spirit which pioneers must have. But these were by no means all there was of the man.

HENRY W. FARNAM.

### *The Teacher.*

Professor Sumner will be remembered by the large number of students who came under his instruction at Yale University as one of the great *teachers* of their time. His brilliant success in the class and lecture room has long been proverbial, and the memory of his rugged face, incisive voice, and infectious enthusiasm is embedded in the minds of a host of students. During the eighties, at the height of his physical vigor, he developed three courses of instruction, each of which carried the mark of his individuality and power as a teacher. These were a course in elementary economics, a two-year course in American political and financial history, and a course in industrial organization, first introduced in 1886-87 and later developed in the line to which he devoted all the energies of the last twenty years of his life. His preëminence as a teacher can be easily described. It hinged on his unusual power to draw his pupils with him. They often felt that the subjects he developed and taught were simple and easy—not because they required little study, but because students were almost unconsciously led by him to reach results with their own efforts. He had the power few have had to stir his pupils to carefully observe social and economic phenomena, to describe them in clear terms, to compare, concatenate and

synthesize their observations and derive generalizations. His deductions were always striking and caught his hearers, but his inductions made a more lasting impression.

The wealth of material at his command was a never-ending source of wonder, and the skill with which he utilized it increases one's admiration for his methods of teaching. Topics naturally of little interest to the general student and with little bearing on current questions were often handled as educational tools and with brilliant success. His frequent use of Irish history, involving the study of land tenure and the laws of primogeniture, comes to mind; also his ability to rouse interest in successive bank statements, e.g. of the English country banks. Commercial, financial, and vital statistics he handled as a means to an end. In his famous course on United States political and financial history, which was taken by students from all departments of the University, he made a lasting impression upon the maturer students by his penetrating treatment of the leading characters and movements in our country's history. And here, too, it was often the least promising field that he cultivated most assiduously. The story of the second United States bank and the controversies of President Tyler's administration were utilized to elaborate his science of money and his political theories.

Professor Sumner is remembered by his striking aphorisms and generalizations; but more fundamentally his extraordinary strength as a teacher rested upon his method of developing the social sciences in his instruction. The process of building fascinated him. The complete structure he looked upon as useless pedagogically. His hatred of humbug and sham was an inspiration to successive generations of students. The best and truest in their mental and moral makeup were deeply stirred by Professor Sumner's rugged honesty, his devoted loyalty to his calling, and withal his kindly personal interest in their growth.

J. C. SCHWAB.

*The Inspirer.*

Probably few teachers have ever lived who have influenced the lives of their students as did Professor Sumner. In my own case, it was Professor Sumner who finally decided my life work. As I learned to know him, I soon found that I must unlearn many



previous impressions. First of all I found that his so-called dogmatism was a myth. His theory of teaching was to express his conclusions as forcefully and unequivocally as possible. He believed that too many pros and cons merely confuse students. But in his own mind every pro and con had been carefully weighed beforehand. Only to his graduate students did he give much opportunity to find this out. Others were apt to misjudge him. Few men have been more self-honest, more ready to admit an error, more anxious to know and teach the naked truth, and more free from that bane of controversy, pride of opinion, than was Professor Sumner. One evening in his library he illustrated this in an unusual way. Part of our conversation turned on a point concerning which I had never heard him express an opinion, nor was it necessary that he should have done so then; but, something making him suddenly realize that he had been in error, he exclaimed: "That was a schoolboy mistake for me to have made, but I certainly made it." Almost any other teacher would have avoided a confession of error, especially in the presence of a pupil. His willingness to let others see the inner workings of his mind had the effect, not of lessening, but of vastly increasing their respect and admiration.

Concealment found no place in his nature. It was as characteristic of him as of Carlyle to hate shams. His object was "to be and not to seem." He despised vacillation, shallow men, and shallow views. He felt strongly on every subject on which he had thought deeply; nevertheless he respected those who differed from him, if only they differed honestly and could give reasons for the faith that was in them. Some of his pupils drifted far from his most cherished teachings, yet he did not fail to continue his interest in them.

When Professor Sumner entered the field of sociology, his economic students and colleagues met him less often, but their feeling of friendship and affection for him steadily increased with years and seemed to be reciprocated.

He will be missed in the fields of biography, history, economics, and sociology, and he will be sorely missed as a teacher, companion and friend, but his influence will endure, embodied as it is, not only in the monumental productions of his pen, but in

the deep personal impulses he communicated to several generations of students. Through them those influences, whether their source is recognized or not, will be handed on from generation to generation.

IRVING FISHER.

*The Idealist.*

It was my fortune to be a student in the last class of Yale College which Professor Sumner instructed in political economy. Early in the college year the teacher's health failed him; he was forced to give up his work, and seek abroad a restoration of the energy on which he had always drawn so heavily. But to the very last day when he spoke before us no failure in his convincing power was apparent to me. Without reference to my notebook I recall with absolute clearness the principles which he enunciated, and the simple, vigorous reasoning which impressed them on our minds. These principles were the orthodox statements of the classical economists, according with Fawcett's Manual, the text-book which we used. Of the teacher's propositions some seemed to us, even then, open to question, but if we did not acquire in them a pure fund of ultimate truths, we did acquire something of higher importance, a feeling of the immense importance of truth, and an earnest determination to secure it. An undergraduate remarked recently that he liked the elementary course in economics, because it was the only one of his courses in which he had to think. I wish I might believe that Professor Sumner's *epigonoï* could make students think as he did. I am sure that I am but one of a multitude of Yale graduates who look back to a course taken under Professor Sumner as marking an epoch in their intellectual development. One might agree with the teacher or disagree; an attitude of passive indifference was, to most of us, out of the question.

Professor Sumner's power to impress on students the interest and importance of any subject which he taught was shown to me in still more convincing fashion in a course on anthropology, which he gave to graduates after his return from abroad. He had but recently begun to devote special attention to this subject, and in his lecture followed faithfully the topics as outlined in Ranke's *Der Mensch*, our text-book. The manual was technical



and matter-of-fact; the topics presented in it were very uneven in interest and importance. Nothing but sheer genius, as it seems to me now, could have made this course appear as it did to us students of economics, profitable and enlightening from beginning to end.

Professor Sumner was giving at this time a course on the economic history of Europe, and in response to our petitions consented to give again a course on the history of the United States, largely economic in character. These subjects he had studied, I think, primarily for his own instruction, and with the feeling that any and all of the social sciences must be based on a historical foundation, if they themselves were to stand the test of time. To these courses I must acknowledge a very particular debt; they determined for me the choice of the subject of my professional career. Seen through Professor Sumner's eyes, history appeared broader and deeper than it had ever seemed before, and if I have done anything or shall do anything to help fill the field of economic history which he opened to us, I am glad to recognize the inspiration which proceeded from him.

While I leave to other and more competent hands a general appreciation of Professor Sumner and his work, one reflection may be allowed, in closing. Professor Sumner, as all are aware who knew him, expressed great scorn for philosophers and their work. Yet there persists in my mind, with such clearness that I am sure I am right in attributing it to him, the statement that "every man has a philosophy." Certainly he had his. Did not a large part of his power proceed from his philosophy? We all know its dogmatic character, and possibly we may have been inclined to exaggerate the importance of that characteristic in seeking to explain his remarkable success as a teacher. Dogmatism may strengthen a man in imparting the ideas of others, but will scarcely furnish him ideas of his own. The great element in Professor Sumner's power, I am inclined to say, was his idealism. Beyond and above the material phenomena of life he taught us to see its great realities. Under the magic of his touch the meanest fact could become a precious truth.

CLIVE DAY.

*The Man.*

As the writer looks back over the years of association and friendship with Professor Sumner, toward the beginnings of such relations, the reflection which disengages itself from many others is this: how inevitably, yet how without effort, did this man win allegiance, at first intellectual, and then of the affections, to himself. That he was a compelling reasoner all admit; but he was more than this, for he appealed to much more than the intellect alone. He was essentially magnetic, and could not help being so. But he never tried to proselytize; he was, on the contrary, of all men the most discouraging, until a purpose had been shown and tested. There was an austerity about him which seemed to say that the scholar's vocation was one that should not be entered upon lightly—not unless one were ready to renounce a great deal that all men want. Sumner neither exalted nor apologized for his profession. He contented himself with showing what he himself had gotten out of his studies, and to some of us this meant a desertion forthwith of interests with which we had previously been experimenting, and a casting in of our lot with him. We felt in him a confidence not stirred before. Whatever he touched, he transformed with interest—lending such glamor, for example, to such an uninspiring object as a colonial piece-of-eight, that all of us wanted to own one, or to see one assayed, at once. This was the sort of teaching that counted. Sumner never had a shred of ostentation of method in his classes; the spirit being there, the form was dispensable. It was the recognition of this spirit, or personality, that compelled the intellectual allegiance of which I have spoken. Sumner showed us the sort of robust, non-esoteric mental operations whose results can be trusted, and in so doing he taught us to trust our own mental operations. His invariable background was common-sense. This is the greatest of all methods.

Upon the more personal side of Professor Sumner, the striking quality, as one reviews the years, was his extreme conscientiousness and his fidelity to obligation. He gave scarcely any "cuts," refusing to make engagements which would conflict with his classes; he believed in "keeping school," and had no sympathy with laxity of discipline. Not many years ago there occurred a



heavy snow-storm, on a Sunday night and Monday morning, and the trolley cars had not yet begun to run on time for an 8.30 class. Some of us who had waded in through the drifts were wagering that Sumner had been stopped for once, for he lived a mile or so from college, and was not very strong at that time. But when we went to his lecture-room to look, he was there, in his familiar old-fashioned leather boots, flushed and panting, but ready for business. He had risen earlier, in anticipation of conditions, and was feeling rather well satisfied with the maintenance of his record. This scrupulous attendance on duty became, on occasion, excessive; but, though one disapproved and regretted, he could not withhold his admiration. Until he was well past sixty, Sumner read and graded all his own class-room tests, these amounting to between four and five hundred every week, to say nothing of the semi-annual examinations. This was a cruel task and should not have been done; but Sumner would not ask of the college the small appropriation needful for his relief. Nor would he allow one of us younger men to do the work; the invariable answer to such an offer was, "No, 't isn't fair." Finally a colleague and old student surreptitiously took the matter into his own hands and got a small annual sum voted for assistance to Professor Sumner, and the latter used to speak in astonished relief of the kindness of the unknown persons who secured him this unexpected aid.

Excluding the deep admiration and warm affection which Sumner inspired by his heroic fearlessness in championing the truth as he saw it, and by his loyal friendship and simple sincerity, the characteristics I have mentioned were perhaps most prominent in the remembrance of most of us, his colleagues and former students. None of us can hope to rival that compelling quality of his, which caused young men to wish to follow him above all others; for that was part of his genius. Nor can we, if we would, rival his herculean toil expended at the instance of a desire to know that was almost feverish in its intensity; but the memory of his unquestioning response to the call of duty—to the lowly duty as well as to the larger one—is something that one can hold before him as a model for imitation. In the presence of such a memory one is ashamed to be a recreant. Perhaps the

greatest thing about Sumner is that one straightway forgets his intellect and work when one is led to contemplate his greatness of character.

ALBERT-G. KELLER.

*The Veteran.*

In common with the other economists gathered to celebrate the twenty-fifth anniversary of the American Economic Association in New York City, December last, I was pained to learn of Professor Sumner's sudden and serious illness which has terminated in his death. I had specially counted on hearing his address before the Sociological Society, and a gloom was cast upon us by the sad news.

In my anniversary address before the American Economic Association I used these words: "We are catholic enough now for all honest scientific work and every different scientific method and viewpoint. We of fifty and fifty-five have learned to respect the worth and work of the still older generations, and none rejoice more heartily than we in the strength of the venerable fathers and in the honor that comes to them."

Although I did not mention Professor Sumner, I had him among others in mind. As years went on I came to have an increasing appreciation of his work and an increasingly friendly feeling for him, and I took pleasure in any recognition that came to him in his declining years. Thus I wrote to Professor Irving Fisher and told him how glad I was that he had dedicated his book "The Nature of Capital and Income" to Professor Sumner.

Professor Sumner and I represented different economic philosophies, and I used to feel that the views which he advocated were not those which corresponded to American conditions and were not calculated to promote social harmony and advance general interests in this country. Although still unable to accept his underlying philosophy of society, I can now see more clearly than then that his clear-cut utterances had in them a message well worthy of consideration. But there never was a time when I did not feel especially pleased to welcome into my graduate classes a Yale man trained by Professor Sumner. While he might have learned views radically different from my own, he had the advantage of something definite and positive as a founda-



tion on which to build. In other words, I experienced the benefits which come from good teaching. I noticed also that, however far Professor Sumner's students got away from his views, which I think they rarely accepted in their entirety, they never ceased to have sincere feelings of affection for him as a teacher and a man.

RICHARD T. ELY.

University of Wisconsin.

## THE HOLDING CORPORATION—II.

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### CONTENTS.

The promotion of the holding company and its natural limits, p. 13; the holding company as an aid to consolidation and monopoly, p. 16; its legal status, p. 18; the Chicago gas trust case, p. 19; the sugar refineries case, p. 20; the Northern Securities case, p. 22; the Standard Oil case, p. 26; present status of the holding corporation, p. 28; dangers to public welfare and to private interests, p. 30; proposed changes in corporation law and the corporate organization, p. 30.

THE holding corporation, being formed not for the purpose of operating factories, stores and railways, but controlling them in its own interest, owns in its ultimate form a majority of the voting shares in all the corporations in which it is financially interested. These subordinate corporations are selected by those administering the affairs of the holding corporation not indiscriminately, but with certain definite economic ends in view. Since there is no direct benefit to be gained from the united management of factories, mercantile establishments, and railways having no economic relationship, unions of this sort under a holding company seldom if ever exist. The holding corporation is used to form integrations, concentrations, and consolidations combining both of these forms of union. The holding corporation is peculiarly adapted to the promotion of integrations, since in this form of union the consolidation of their administration and not of the operating plants is the object sought. It harmonizes the economic relationships of the establishments without disturbing the physical personality of any of them.

The holding corporation is equally well fitted to furnish a form of union between establishments of the same general character. When such plants are situated so far apart that the fields of operations do not overlap, they are not of course competing in the sale of a common product. In such cases, however,

they are likely to find themselves purchasers of materials in the common market, and union under a holding corporation removes this source of economic conflict. Moreover, since the establishments are of the same general character, the administration may be centralized and comparative tests introduced for the purpose of stimulating efficiency with its attendant economy. Examples of this type of consolidation effected through the holding corporation are most frequently found in the public service field, such as gas and electric light companies and to a certain extent street car systems located in several different cities.

When the subsidiary corporations are direct competitors before the formation of the consolidation, the holding corporation is the direct successor of the original trust and has to a quite remarkable extent perpetuated its characteristics and inherited in popular language and thought its name. The holding corporation has in addition certain peculiar features which render it a more efficient tool in the hands of the promoting class for the purpose of uniting a group of competitive establishments.

In the first place, a holding corporation consolidating an entire industrial group may in certain cases be formed without consultation with the owners of the separate and competing establishments and without their mutual agreement upon the terms of union. This may be accomplished by purchasing in the open market a controlling interest in the stock of each of the companies which it is desired to consolidate, the incorporation of the holding company, an exchange of the stock of the subsidiary companies for stock in the holding company on terms arranged by the common owners of both kinds of securities, and the subsequent sale of such part of the holding company's stock as may be necessary to secure funds to pay for the purchased stock of the subsidiary corporations. If the promoters are able to retain sufficient stock to ensure control, the consolidation will remain under their management; if not, it will still remain a consolidation, although its control will pass into other hands, the persons who originally owned the stock of



the subsidiary companies subsequently purchase an equivalent amount of stock of the holding company, the new organization will be owned largely and entirely controlled by the former proprietors of the competing plants.

In the second place, since a holding company may be formed to hold the stock of another holding corporation, it follows that by erecting one upon another, the amount of capital necessary to control an industry may be reduced to a nominal amount, provided the process be indefinitely extended.

Thus let us suppose that there are one hundred independent competing establishments within a certain industry and in each establishment there is invested one million dollars of capital. The total investment is thus one hundred millions of dollars, and a group of capitalists must necessarily possess somewhat over fifty millions to be certain of control over the industry by any of the ordinary methods of consolidation. A holding company with fifty-one millions of capital stock will control all the competing plants, and a group of capitalists with twenty-six millions of capital are able to permanently control the holding corporation. The formation of a second holding corporation with twenty-six millions of capital stock will control the first holding corporation, and a group of capitalists with thirteen and one-half millions are able to control the second holding corporation, and through it, the first holding company, and through that, all the plants in the entire industry. Each additional holding corporation superimposed upon the one preceding it reduces the amount of capital necessary for the control of the industry by a little less than one-half, and consequently the limits to the process are found only in the practical considerations connected with the duplication of the corporate organization.<sup>47</sup>

It is, of course, evident that during the process of formation, that is, while the several holding corporations are being formed,

<sup>47</sup> See chart (facing page 16) illustrating the organization of the Dupont Powder Company. This chart was prepared by Mr. W. S. Redhed.

ERRATA.—For Cohemouth Pwd. Co., read Conemaugh Pwd. Co. In the statement of the bonds of the Del. Securities Co., for \$3,986,000, read \$3,988,000. In the statement of the amount of the stock of the Lake Superior Pwd. Co. held by the Laflin & Rand Pwd. Co., for \$92,600, read \$82,600.

it will be necessary for the organization to control somewhat over one-half of the total investment in the entire list of corporations consolidated. This is, however, a banking or underwriting proposition that is likely to be adjusted to periods of easy money and after the final organization is completed, capital not necessary for the control may be returned to its normal channels.

In the third place, there is no natural limit to consolidation effected through the means of the holding corporation except that fixed by the boundaries of related industries. As long as there are advantages, either temporary or permanent, to be gained by the administrative union of independent industrial establishments, and so long as a combination of promoters and underwriters can command for a limited period sufficient capital to purchase a controlling interest in a group of corporations which it is desired to unite, the process of consolidation through the instrumentality of the holding corporation finds no natural check to its onward course. While it would thus be theoretically possible to effect a universal consolidation of all establishments in the corporate form by means of a single holding corporation, for practical reasons this method is never followed.

In the usual course of events, a holding corporation is chartered to consolidate all the establishments within a limited industrial group. A second holding corporation is formed, at the same time if capital is abundant, to perform the same work in a sister field. This process is continued until all the distinct groups in a great industry are united into a permanent consolidation through the several sister holding corporations. A holding corporation of a second order may then be formed and acquire a majority interest in the voting shares of each of the holding corporations previously formed, thus controlling the several holding corporations of the first order, and through them the subsidiary corporations operating all the establishments in the entire industry in question. The same process may then be carried out in all the great interests of any country, and finally, a holding corporation of the third order formed to acquire control of all the holding corporations of the second order, thus consolidating



W. Vigor Co. (Cal.)

Internationally All  
 Hudson Dyn.  
 2 Pwd. Co. (Cal.)  
 (Cal.)  
 \$200,000

Wm. Co. (Cal.)

\$0

\$15,700 The Monarch Pwd. Co. (Pa.)  
 \$20,000

\$20,300 Birmingham Pwd. Co. (Ala.)  
 \$22,500

\$22,125 Chattanooga Pwd. Co. (Tul.)  
 \$250,000

\$209,100 Laflin Pwd. Mfg. Co. (Pa.)  
 \$600,000

\$25,300 Globe Pwd. Co. (Pa.)  
 \$90,000

\$14,500 King Merchantile Co. (Tul.)  
 \$30,000

\$27,800 The Equitable Pwd. Mfg. Co. (Tul.)  
 \$100,000

\$50,000 Mahoning Pwd. Co. (Pa.)  
 \$100,000

\$30,000 Shenandoah Pwd. Co. (Pa.)  
 \$80,000

\$5,800

\$5,000

\$4,000

\$2,000

\$1,000

\$2,000

\$10,000

\$20,000

\$20,000

\$20,000

\$20,000

\$20,000

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\$20,000

\$20,000

\$20,000

## LEGEND



Represents a company that has been dissolved and its property transferred to one of the operating companies.



Represents an operating company.



Represents a holding company.



Represents a company that is both a holding and an operating company.

\*Control\* is used to show the relationship between the Eastern Dyn. Co. and some of its subsidiary companies because it is impossible to determine, owing to insufficient information, whether the stock or only the physical property of these companies was acquired.

→ Arrows point toward the company holding capital stock in another company; and the amount placed upon the arrow shows the amount of stock so held.

NOTE: This diagram is based upon the information contained in the Amended Petition (dated July 30, 1907) in the case of the U.S. of Avenue E. L. de Pont de Nemours & Co. and others, in the Circuit Court of the United States for the District of Delaware.





the material interests of any country which sanctions the promotion of such organizations.<sup>48</sup> Moreover, the more holding corporations introduced into the plan between the ultimate holding corporation and the ultimate operating corporations, the less the

<i>48 Holding Corporation 3d Order</i>	<i>Holding Corporation 2d Order</i>	<i>Holding Corporation 1st Order</i>	<i>Operating Corporation</i>
United States Material Interests Corporation	Railways Securities Company	New England Railways Co.	Boston & Maine R. R. N. Y., N. H. & H. R. R. Pennsylvania R. R. Co. N. Y. Central R. R. Co. Erie Ry. Co.
		Trunk Line Railways Co.	Southern Ry. Co. Atlantic Coast Line Ry. Union Pacific Co.
		Southern Railways Co.	A. T. & St. Fe. Ry. Co. C. & N. W. Ry. Co.
		Trans-Continental Railways Co.	People's Gas Light Co. of New York
		Eastern Public Service Co.	The Eastern Trolleys Co. The Electric Light Co.
	Public Service Securities Company	Central Union Co.	People's Gas Co. The Edison Co.
		Southern Public Service Co.	The Suburban Elec. Co. The Gulf Coast Elec. Rys.
		Western Public Service Co.	The Southern Gas Co. Pacific Coast Gas Co.
		The Steel & Iron Co.	The Western Electric Light Co. etc.
		The Steel & Iron Co.	U. S. Steel Corporation Jones & Laughlin The Lackawanna Steel Co. etc., etc.
	Manufacturers Securities Company	The Brewers & Distillers Co.	The Whiskey Straight Co. The Pabst Brewing Co. etc., etc.
		The Furniture Manufacturing Co.	The Sideboard Co. The Mahogany Co.
		The Machinery Co.	The School and Church Furniture Co. Electric Machinery Co.
		The Gents Furnishing Co.	Mining Machinery Co. etc., etc.
		The Suit & Cloak Co.	The A. Dealer Co. The B. Dealer Co. etc., etc.
	Merchants Securities Company	The Small Wares Co.	The Palace Suit Co. The Palace Cloak Co.
		The 5 and 10 Cent Store Co.	The J. Doe Co. The Handy Store Co.
			The 5 & 10 Cent Store Co. of New York
			The 5 & 10 Cent Store Co. of Boston, etc., etc.

actual capital required both during the formation of the grand consolidation and in the control of it after its formation.<sup>40</sup>

It is thus evident that the holding corporation is the most efficient instrument that up to this time has been devised for the formation and control of monopolies which depend upon organization for their successful operation. Since, however, such organizations are absolutely dependent upon the State within which they are formed for the right even to exist, an easy method for their effective control or complete prohibition is not lacking. Just as the Elizabethan monopolies were granted by the Crown and were terminated when the Crown pleased to order their destruction, so all monopolies created and maintained through the instrumentality of the holding corporation are creations of the State and may be dissolved whenever the State so directs.

In the United States the legal status of the holding corporation is exceedingly complicated, not by virtue of the nature of such organizations, but on account of the conflict of two jurisdictions, that of the several States and of the Federal government. Since each of these jurisdictions is by the Constitution of the United States supreme within its own particular field, and since the Constitution gives the Federal government authority over interstate commerce only, the central government has the right to interfere with corporations chartered by the several States only so far as their interstate operations are concerned. That is, a holding corporation, organized under the laws of any of the several States for the purpose of consolidating several corporations, is subject to federal control only so far as it can be shown to interfere with and restrain interstate trade.

<sup>40</sup> "Indeed, if the contentions of the defendants are sound, why may not all the railway companies in the United States that are engaged, under the State charters, in interstate and international commerce, enter into a combination such as the one here in question, and by the device of a holding corporation obtain the absolute control throughout the entire country of rates for passengers and freights beyond the power of Congress to protect the public against their exactions? The argument in behalf of the defendants necessarily leads to such results, and places Congress, although invested by the people of the United States with full authority to regulate interstate and international commerce, in a condition of utter helplessness, so far as the protection of the public against such combinations is concerned." 193 U. S., p. 343.



The attitude of the several States toward the holding corporation varies widely. Some permit the formation of such corporations without placing any restrictions upon the extent to which the consolidation may be carried; others prohibit the formation of monopolies under any form, but allow holding corporations to be organized and to operate so long as they do not through this instrumentality maintain monopolies; others do not provide for the organization of holding corporations at all; and in a few cases the formation of corporations for the purpose of holding stocks in other companies is definitely forbidden.

The first important case to come up, in this connection, under State corporation law is known as the Chicago Gas Trust case.<sup>50</sup> For some years, four gas companies incorporated under the laws of Illinois had been operated in Chicago under a division of the territory combination. In 1892, in order to assure the permanent harmonious relations of these companies, the Chicago Gas Trust Company was incorporated under the laws of Illinois for the purpose of constructing and operating gas companies and authorized in addition to purchase, hold, and sell the stock of gas companies in Chicago and in any other part of Illinois. The new company acquired a controlling interest in the stock of the four existing gas companies in Chicago and proceeded to operate them practically as though the subsidiary corporations had been dissolved and the plants were owned by one company. The legality of the holding corporation was attacked in the courts on the grounds, first, that the statutes of Illinois made no provision for the organization of a holding corporation, and second, that even if the holding of stock were found to be lawful, the organization must be still held illegal as constituting a monopoly in restraint of trade within the State. The general incorporation act of Illinois provides for the organization of corporations for manufacturing and commercial purposes by using the general phrase for "any lawful purpose."<sup>51</sup> It was therefore contended that since the purchase and sale of stock was permitted by the laws of the State, any corporation organized for such a purpose must of necessity be organized for a lawful purpose and was therefore

<sup>50</sup> 130 Ill., p. 269.

<sup>51</sup> An Act Concerning Corporations, 1872, Sec. 1.

sanctioned by the State law. The court held, however, that since a statute of this kind was a grant to the incorporators, its terms ought to be strictly constructed; that if the Legislature had wished to authorize holding corporations they should have distinctly sanctioned such organizations by granting the right to purchase, hold, and sell stock in other corporations. Hence the Court declared the Gas Trust illegal without considering its monopolistic features at all. The Chicago Gas Trust Company was dissolved and a new company formed which acquired directly the properties previously controlled through the holding corporation. In those States which followed the policy adopted by Illinois, the holding corporation therefore has been unable to gain a footing, but under the laws of New Jersey, Delaware, Maine, and other States, an opportunity has been afforded for the formation of holding corporations<sup>52</sup> wherever they have been deemed advantageous; consequently the opposition of the States refusing to sanction the holding corporation has been of small importance.

Under the authority granted by the commerce clause of the Constitution the Federal government enacted in 1890 the Sherman Anti-Trust Act, declaring "every contract, combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States" illegal, and making it a criminal offence to monopolize or attempt to monopolize the interstate commerce of the United States. In view of the conditions existing at the time the Act was passed, as well as from the discussions in Congress, it is generally admitted that the purpose of the anti-trust legislation was to prevent the formation of monopolistic consolidations of manufactures located in the several States, and to compel the dissolution of such organizations already in existence.

In the first important case<sup>53</sup> determining the status of the holding corporation under Federal law, the Supreme Court held that the purpose of the company was to consolidate the manufacturing of refined sugar. That while such a consolidation might act in restraint of interstate trade, nevertheless such restraint was an incidental result of the organization of the holding cor-

<sup>52</sup> *Ellerman vs. C. J. Rys. & U. St. Yds. Co.*, 49 N. J. Eq., p. 217.

<sup>53</sup> *U. S. vs. E. C. Knight & Co.*, 156 U. S., p. 1.



poration and not its primary purpose. Hence the American Sugar Refineries Company, the successor of the Sugar Trust previously held illegal under the laws of New York, was held to be free from the penalties imposed by the Sherman Act of 1890. The holding corporations organized in the purely manufacturing industries, even though they virtually monopolized the production of some particular commodity, were held therefore to be free from public control on the following grounds: first, they were permitted by the States from which they held their charters, and second, the United States government had no authority over manufacturing. In order, therefore, that the monopolies in the holding corporation form be held illegal, one of the following changes in our laws must be made: either the States must without exception refuse to permit the formation of consolidations through the agency of the holding corporation, or the Supreme Court of the United States must practically reverse its decision in the sugar refiners case, thus holding that the primary purpose of any corporation which virtually controls an entire industry is to control the sale of the products rather than to consolidate the manufacturing processes, or third, the United States Constitution must be amended, extending the scope of the commerce clause to include industrial corporations engaged in manufacturing in more than one State.

Two years later action was brought under the same Act against the Trans-Missouri Freight Association,<sup>54</sup> an organization of the railways south and west of the Missouri river, for the purpose of fixing rates and fares on interstate traffic. In this case the court decided that the Sherman Act applied to railroads in their interstate business. The general principles of this decision were reaffirmed in the Joint Traffic case<sup>55</sup> a year later and as a result of these decisions the chief economic effect of the Act of 1890 has been, not to prevent the consolidation of manufacturers, but to prevent open agreements among the railroads of the United States and thus to encourage secret arrangements and indirect methods of securing harmonious traffic relations. Wherever possible some formal method of

<sup>54</sup> 166 U. S., p. 290.

<sup>55</sup> 171 U. S., p. 505.

securing this end was adopted. Sometimes it was the voting trust, sometimes a system of leases, sometimes a holding corporation, and when for any reason neither of these methods was found feasible, the community of interest plan was adopted. Of these four methods the holding corporation obviously possessed marked advantages. It had been used by both the Baltimore & Ohio and the Pennsylvania for a half century to control their network of railroads west of the Appalachians, and in like manner, but somewhat later, by the New York Central to control the West Shore, the Michigan Central, the Lake Shore, and its other western lines. In the same way the Boston & Maine consolidated a large portion of the railways in northern New England, and the New York, New Haven & Hartford those in southern New England. At the same time the Southern Pacific in<sup>56</sup> the West, the Rock Island in the central States, the Erie in the eastern States, and the Southern Railroad in the Southeast were busily engaged, in extending their systems through the holding corporation, and in addition, most of the other railways in various parts of the country had made use of the same device with equally successful results and without the interference of the Federal authorities.

In the Northwest two parallel railways, the Great Northern and the Northern Pacific, had been operating independently of each other in comparative peace<sup>57</sup> for twenty years. Each road was vitally interested in the development of the trade with the Orient. Each was dependent on pacific traffic arrangements with each other and with connecting lines to Chicago territory. It was first proposed to incorporate a holding company to take over the control of the Hill interests in the Great Northern and thus perpetuate the harmonious relations then existing. This method was rejected as too exclusive and then "the question came up, Why not put in the Northern Pacific?"<sup>58</sup> Meantime the two roads had been making plans for a Chicago connection, preferably by securing control of an existing line. Several railroads

<sup>56</sup> See Report of Southern Pacific, 1888.

<sup>57</sup> Testimony of J. J. Hill, cited in Meyer's "History of The Northern Securities Case," and authorities there cited, p. 227.

<sup>58</sup> Meyer's "History of the Northern Securities Case" and authorities there



were considered, but finally the Burlington was determined upon as the most available. Arrangements were perfected by which the Northern Pacific acquired one-half of the Burlington capital stock and the Great Northern the other half, the two roads issuing their joint bonds in payment thereof. While these arrangements were being negotiated, the Union Pacific interests, under the direction of Messrs. Harriman and Schiff, began buying Northern Pacific stock, in order to protect the traffic relations of the Union Pacific with the Burlington railway. The Morgan and Hill party succeeded, however, in gaining control of the Northern Pacific by taking advantage of a provision in its charter which permitted the retirement of the preferred stock. For the purpose of preventing such struggles for supremacy in the future, and to insure the harmonious development of the great railways of the Northwest, the original idea of a small holding company was extended, and the Northern Securities Company was incorporated under the laws of New Jersey on the twelfth day of November, 1901.

By the terms of its charter, the Northern Securities Company was empowered to purchase, hold, and sell securities in other corporations, to aid in any manner such corporations, and to acquire and own such real estate as might be necessary for the transaction of its business. Shortly after its incorporation, the Northern Securities Company acquired by exchange of stock with the shareholders of the two companies, about 76 per cent. of the capital stock of the Great Northern Railway Company and approximately 96 per cent. of the stock of the Northern Pacific Railway Company. Late in December, 1901, the Interstate Commerce Commission began an investigation into the subject of railroad consolidation with the object of throwing light upon the Northern Securities venture. Early the next year suits were brought independently by the State of Minnesota and the United States for the purpose of testing the legality of the Northern Securities Company and securing its dissolution in case it should be found to be illegal. In the Federal case<sup>59</sup> suit was brought

<sup>59</sup> The case brought by the State of Minnesota was transferred to the U. S. Circuit Court, and the trial proceeded along with the Federal case. The Minnesota case was brought under the Anti-Trust law of that State, similar in most points to the Sherman Anti-Trust law.



under the Sherman Anti-Trust Act and section five of the Interstate Commerce law. The important questions raised and discussed in this case were as follows: first, was the Northern Securities Company, having purchased a controlling interest in the stock of two parallel and competing railroads, a combination in restraint of trade; second, even if a monopoly had thus been created, had the Federal government the right to interfere with the property rights of persons who had invested in a corporation created by one of the States?

In its answer to the first question, the court followed closely the reasoning and the decision in the *Trans-Missouri Traffic* case. Consequently it was held that any combination having the power to restrain interstate trade, even though it never exercised it, was illegal under the Sherman Act and that the Northern Securities Company, if not a trust, was a "combination in restraint of interstate and international trade."<sup>60</sup> The second question was the cause of an exhaustive discussion,<sup>61</sup> since it involved a consideration of the powers of the national government to regulate the "affairs or conduct of State corporations engaged as carriers of commerce among the States or of State corporations which although not directly engaging themselves<sup>62</sup> in such commerce yet have control of the business of interstate carriers." Granted that the Federal government had been intrusted by the Constitution with exclusive control over interstate commerce and that through the instrumentality of the holding corporation a consolidation having the power to exercise monopolistic control over such commerce had been created by one of the States, had the Federal government the power to compel the dissolution of the creation through which the monopoly was established, or must it content itself, as suggested by the attorneys for the corporation,<sup>63</sup> with the punishment of the subordinate companies for open and overt monopolistic practices? The real question as it appeared to a majority of the court centered in the query,

<sup>60</sup> 193 U. S., p. 377.

<sup>61</sup> See especially the dissenting opinion of Mr. Justice White, with whom Justice Fuller and Justices Peckham and Holmes concurred. 193 U. S., *et seq.*

U. S., p. 329.

263, 270, 278.

Was the holding corporation known as the Northern Securities Company an investment company in the ordinary sense of the word, or a "custodian" of the stocks of the railways which it had united into one organization? If the holding company were an investment corporation, then to order its dissolution would be an interference with property rights which the Supreme Court would be the last to disregard. If it were a custodian of stocks, an instrumentality created for the purpose of controlling and possibly restraining interstate commerce, then to order its dissolution and the return of the stocks to their equitable owners would not constitute an interference with the property rights of the stockholders in the constituent companies, since Congress had by the Sherman Act declared that property rights might not be created through the monopolization of interstate commerce.<sup>64</sup> In the words of the court, "the decree, if executed, will destroy not the property rights of the original stockholders of the constituent companies, but the power of the holding corporation as the instrument of an illegal combination of which it was the master spirit to do that which, if done, would restrain interstate and international commerce." The court adopted the latter view and consequently affirmed the decree of the Circuit Court, which enjoined the holding company from voting the stock or from exercising any control over the railway companies whose stock was held; and further, it enjoined the constituent railroad companies from paying any dividends to the holding company on the stock which the holding corporation held in its treasury.

As a result of this decision, the Northern Securities Company, by resolution by the board of directors approved by the stockholders at a special meeting held on April 21, 1904, provided for the reduction of its capital stock, by 99 per cent., through the exchange of \$39.27 of stock of the Northern Pacific Railway Company and \$30.17 of the stock of the Great Northern Railway Company for each share of the stock of the Northern Securities Company. An injunction was sought by the Harriman interests to prevent the consummation of this plan, on the ground that each stockholder was entitled to receive the original shares deposited rather than his ratable proportion of the assets of the

<sup>64</sup>193 U. S., p. 357.



company.<sup>65</sup> In support it was argued that the Northern Securities Company having been held an illegal corporation was void from the beginning, and therefore the title to the securities deposited had in fact never passed from the original owners to the Northern Securities Company. The court denied the injunction on the ground that the parties had sold their stock to the Northern Securities Company with full knowledge of the proceedings and condition and that the sale was on their part absolute and unconditional: therefore, the title to the stocks had intentionally been passed and consequently the former owners could not claim the specific shares.<sup>66</sup> The decision of the Supreme Court in the Harriman injunction suit is likely to have important results in the future. While the holding company as a means of establishing and maintaining control of an industry was declared illegal in the Northern Securities case, the community of interest principle, which secures the same results, temporarily at least, is stamped with the judicial approval. It would seem, therefore, that under any circumstances the holding companies, whenever declared illegal, would have a permanent refuge in the community of interest method of control.

In some respects, the most significant of all the cases to come before the courts is that of the Standard Oil Company,<sup>67</sup> recently decided in the Circuit Court. After the trust was declared illegal in 1892, the trustees proceeded to dissolve the organization by an exchange of the certificates for a pro rata assignment of shares in twenty selected corporations which controlled the remaining companies in the original trust. In 1899 the charter of the Standard Oil Company of New Jersey was amended to permit it to purchase, hold, and sell the stock of other corporations in this and other countries, and at the same time its capital stock was increased to \$100,000,000.

This company<sup>68</sup> then exchanged its stock for shares in the nineteen selected corporations and became the holding company

<sup>65</sup> 197 U. S., p. 244 *et seq.*

<sup>66</sup> 197 U. S., p. 299.

<sup>67</sup> U. S. vs. Standard Oil Co. of N. J. *et al.* Brief of Law, Facts and Arguments for Petitioners.

<sup>68</sup> The Federal government claimed in this suit that the Standard Oil trust failed to carry out the dissolution of the trust in good faith and that as a



for the Standard Oil interests. Late in 1906 suit was brought in the United States Court by direction of the attorney-general of the United States and on the nineteenth of November, 1909, almost exactly three years later, a decision was rendered, declaring the Standard Oil Company of New Jersey, the holding corporation, an illegal combination under the Sherman Anti-Trust Act and enjoining it from further continuing business in its present form.<sup>69</sup> It was, of course, generally admitted that the Standard Oil Company had effected a substantial monopoly of the petroleum industry in the United States. A similar condition, however, existed in the sugar refining industry at the time the Sugar Refineries case was decided and there the cause was dismissed on the ground that the control over manufacturing was intrusted by the Constitution to the several States. The Standard Oil Company, however, was both a manufacturing company and a commercial company. Its business as a transporter of oil surpassed in extent and influence that of many of the railroads as carriers of commercial products. Moreover, the company had for years been extending its business into the commercial fields in the wholesale and retail distribution of its manufactured products; consequently, when the plea was entered in its defense that it was a private corporation, not a public utility corporation, and therefore to be classed with the sugar refining company rather than the Northern Securities Company, the court held that it was engaged in commerce and that among corporations engaged in this domain the Sherman Act made no distinctions. The decision of the court in this matter seems, therefore, to be directly in line with all the previous decisions of the Supreme Court in regard to the scope and meaning of the Anti-Trust Act. The principal conclusions, as stated by Judge Hook in a concurring opinion, express briefly but comprehensively the general conclusions reached.

matter of fact had retained control of the various companies from the date of the court's decision in 1892 until the formation of the Standard Oil Company of New Jersey, a holding corporation, in 1899.

<sup>69</sup> The case was soon after appealed to the Supreme Court and is now before that body for final decision.

"The principal conclusions, upon which we are all agreed, may be briefly stated as follows: A holding company owning the stocks of other concerns whose commercial activities, if free and independent of a common control, would bring them into competition with each other, is a form of trust or combination prohibited by Section I of the Sherman Anti-Trust Act.

"The Standard Oil Company of New Jersey is such a holding company. The defendants who are in the combination are enjoined from continuing it and from forming another like it. The holding company is enjoined from exercising the rights of a stockholder in the subordinate companies, and they are enjoined from allowing it to do so or to benefit therefrom in the way of dividends.

"It is thought that with the end of the combination the monopoly will naturally disappear, but lest, instead of resulting that way, the monopoly so wrongfully gained be perpetuated by the aggregation of the physical properties and instrumentalities by which it is maintained in the hands of a member of the combination and the liquidation and retirement from business of the other members, it is held that such a course would violate the decree."<sup>70</sup>

It would seem from the conclusions reached in this case that a considerable change in the attitude of the court toward the holding company had occurred since its first decision in 1894. It is entirely possible, therefore, that in the future the Supreme Court will hold that monopolistic aggregations of capital in the purely manufacturing field must of necessity directly affect interstate commerce in the commodity manufactured, and that under such circumstances many of our larger industrial consolidations, especially those in the holding company form, may be declared illegal and forced to dissolve, even though their monopolistic power may never have been used to the disadvantage of the public.

While the process of determining the legal status of the company has been in progress, neither the States nor the courts have been idle. Following the lead of New

<sup>70</sup> *Tribune*, November 21, 1899.



Jersey, thirteen of the other States of the Union<sup>71</sup> have enacted statutes definitely approving the policy of a corporation holding stock in other corporations, and in several of the other States this policy, while not directly sanctioned by statutes, seems to have the silent approval of the administrative officers and the courts. At the same time the corporate interests have eagerly been taking advantage of the opportunities thus offered to consolidate the various industries on the ground, evidently, that a consolidation once effected is not likely to be disturbed. This movement has been most marked in the railway domain, where it originated. As shown by the investigation made by the Interstate Commerce Commission in 1906,<sup>72</sup> somewhat less than one-half (46 per cent.) of the total capital stock issued by the railways of the United States was held by railway corporations,<sup>73</sup> and the practice seems to be increasing rather than the reverse. While no thorough investigation of the situation in the public service field has been made, an examination of the available data shows the same movement, somewhat less advanced, but progressing with great rapidity, especially since 1905, in almost all lines of that important domain. In a large proportion of the cases the consolidation of all the public service companies within a given territorial area is formed, partly for the sake of economy and partly for the sake of monopolistic control. In the strictly manufacturing field the consolidation movement, effected largely through the instrumentality of the holding corporation, may be compared to a volcanic eruption, reaching a climax in the years 1899-1901, and then followed by a period of comparative quiet. In each of the more important industries, a holding company exercises a very large influence, and in some cases practically dominates the industry. In the commercial field the consolidation of mercantile houses has apparently just begun, the Associated Merchants' Company of New York being the

<sup>71</sup> Alabama, Connecticut, Delaware, Maine, Nevada, New York, North Carolina, Ohio, Pennsylvania, Washington, West Virginia, Wisconsin and Wyoming.

<sup>72</sup> *Intercorporate Relations of Railways in the U. S.*, 1906, p. 45.

<sup>73</sup> <i>Railway Securities</i>	<i>Funded Debt</i>	<i>Stock</i>
1. Owned by the public .....	\$7,842,400,969	\$4,743,049,585
2. Owned by the railways .....	1,440,360,507	4,114,851,990



most important instance at the present time. The success of this company would indicate that, if such organizations are not prevented by legal restraint, they are likely to become of large importance in the near future.<sup>74</sup>

With the States furnishing the opportunity and in some cases actively approving the consolidation of industrial establishments through the holding company, with the industrial and financial leaders seeking its many advantages, the dangers threatening our industrial system are likely to be overlooked or forgotten. On the one hand stands monopoly with its palsyng touch; on the other, the disruption of immense business organizations by order of the judges, bound by law and by every sacred obligation to destroy that which the States and the corporate interests are busy establishing. In order to avoid both of these threatened disasters to our future industrial development, it is evident that a radical change in our corporation law ought to be effected by the States and the Federal government acting in harmony. While it is beyond the scope of this article to discuss such changes in detail, the main outlines may be briefly indicated.

In the first place, the United States should by law provide for the incorporation of all business enterprises engaged in interstate trade or in manufacturing in more than one State. Such corporations should be permitted to hold stock in other corporations under proper government supervision and control.

In the second place, a national commission should be created to supervise the incorporation of such industrial enterprises and the control of their corporate operations after the period of formation. The Bureau of Corporations might be entrusted with this particular task for corporations within its particular field and the Interstate Commerce Commission those engaged in the transportation of goods and messages; or an entirely new commission might be created to supervise the operation of all enterprises incorporated under the Federal law.

In the third place, the several States should provide for the incorporation of business establishments doing strictly a State

<sup>74</sup>For a discussion of the position of the holding company in European see Liefmann, "Beteiligungs- und Finanzierungsgesellschaften,"

business and for those only. Such corporations should not be allowed to hold stock in other corporations.

That important changes in the formal relations of the great corporations and the public administration must come in the future is not open to question. If they do not come through changes in our Constitution and statute laws, they are certain to come more slowly, but none the less surely, through a series of judicial decisions. In the interests of public welfare, as well as of private interests, they ought to come through legislative action, and that in the immediate future.

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## VICTORIAN WAGES BOARDS AND THE NEW ZEALAND CONCILIATION-ARBITRATION ACT.

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### CONTENTS.

Conditions of unrest leading to legislation, p. 32; history of legislation, p. 33; the present New Zealand law and its administration, p. 35; the council of conciliation and its operation, p. 37; promptness in reaching decisions, p. 39; publicity, p. 40; the court of arbitration, p. 40; influence of its decisions upon wages, p. 41; effect of the first law upon strikes, p. 42; the amendment of 1908 and its results, p. 43; the special boards, or wages boards, of Victoria, p. 45; example showing operation of the boards, p. 47; executive and judicial review of the boards' findings, p. 49; suspension of the act during strikes, p. 50; effect of the legislation on wages, p. 51.

NEW ZEALAND and Victoria, with their experiments in conciliation and arbitration of industrial disputes, are not in fact the Utopia which fancy from a distance seems to paint them, a very Paradise where the lion and the lamb lie down together in perfect peace and concord. Nor are the Australasians much different from other selfish, sinning sons of Eve. Human nature has not been changed there: supply and demand still hold sway; employers still pay as little as they must and employed return as little as they may. And so these labor laws, which have helped to bring a large measure of industrial peace to Victoria and New Zealand, are not mere quixotic dreams of no applicability to practical, strenuous Twentieth Century America. There are lessons in them for us to study and learn and inwardly digest.

Before the creation of the Victorian Minimum Wages Boards and the New Zealand Court of Industrial Arbitration, strikes were almost as much the order of the day for the Englishman in those far off colonies as for the Englishman at home. In the early nineties and just before, strikes occurred over the continent of Australia with a frequency and bitterness that seemed to foreshadow nothing but perpetual open clash between the warring elements and a permanent handicap to trade and commerce. Your Australian working man is essentially a Britisher,



a compromiser, a man with an inherent respect for caste and class. But the free space of Australia, the pioneer life, the sun-dering of the old home ties, have mixed with these traits something of the early American vigor and self-reliance and not a little of the ability and willingness, once he is aroused, to hit hard and fast. The New Zealander is his first cousin, a little more British in his clinging to the ways of his fathers, a little less American in his greater respect for law as law. And the big employers and the owners of the large sheep runs, the "fat men," as they dub their captains of industry, went too far; they overreached themselves, and opened the way for their own undoing by these workers. The land and wealth of Victoria and New Zealand were accumulating in the hands of a few. The country was rapidly taking on the aspect of a succession of vast ranches or runs, where sheep fattened upon fertile tenantless acres, making a few rich men richer, while towns and cities were filling with homeseekers, who, instead of lands for settlement, found the factory, and often enough a sweated wage.

Unrest was everywhere. In Queensland armed camps of shearers were only put down at last by the military. In all the other states strikes took place, sufficient, at last, in number and disorder to set men to thinking and talking about remedies. In those days men in Australia were noticing continental socialism, sympathizing with the successes of labor in Germany and with the victory of the workers in the great London dockers' strike. And the extra hardships following in the train of heavy droughts, the collapse of the Melbourne land boom, and the consequent numerous bank failures in Victoria, along with the maritime strike of 1890, which for a time tied up the shipping of Australia and New Zealand, prepared the way for the electoral success of the Labor and Progressive parties. The workingmen became convinced that only by their votes and by legislation of their own could they hope to prevent a repetition, in these new and abundant lands, of the inequalities, the sufferings, and the injustices they had hoped were left at "home" in far-off England.

The Progressive party was brought in to power in New Zealand under the energetic reformer Ballance in 1890, and

although land reform was the more critical issue and had the right of way within the next two years, Parliament had before it on several occasions the carefully studied scheme of the Minister for Labor, Mr. William Pember Reeves, for the compulsory arbitration of labor disputes. Two years later the bill was enacted, and on the 1st of January, 1895, the act went into effect.

In the year 1896 the first of the Victorian Wages Boards was formed, under a Factories and Shops Acts, framed to meet the recommendation of the old Royal Commission of 1883 and of the Parliamentary Board of 1893.

Thus we have two matter-of-fact British stocked communities, where freedom from governmental control had permitted in a rich virgin state vast monopolies in the soil to a few and had left to the many factory conditions leading straight to the old familiar clash between employer and employed, with all its attendant losses, discord, and bitterness.

Victoria with a population of about 625,000 and an area of 88,000 square miles—or a little less than the area of New York and Massachusetts combined; and New Zealand with a population just short of a million and an area of 104,000 square miles—or about the same size as New York, Pennsylvania and Massachusetts, and with one-twentieth of the total population of these three States, each has tried the *laissez faire* American way of watching the industrial conflict proceed from underpay and overwork to lockout and strike and unemployment and sweating. Each at the same time began to experiment with cures. Victoria has tried state intervention of one type, New Zealand has chosen an essentially different type. But back of both schemes is the common idea, now become a deep-rooted and wide-spread conviction, that it very clearly is the duty of the state to “interfere” in industrial disputes: that the prevention of strikes, the regulation of pay, and the fixing of hours of labor are obligations which the body of the citizens must take up through their constituted authorities.

The first act in which the principle of compulsion was laid down as an integral and essential part of arbitration of labor led to blaze its way through a forest of difficulties.



Employers at the start were merely indifferent and contemptuous. Then, as labor fell in behind the Act and it became plain enough that progress was being made straight on to the goal of state regulation of wages and hours, obstructions were piled across the path. Employers now came together, to point out the pitfalls ahead, if not to dig them, and succeeded at least in diverting the Act from its first planned course.

The party of the late over-mastering "King Dick" Seddon and of the present astute Premier, Sir Joseph Ward, have not been without worldly wisdom these twenty years they have been in power, even while moved by a genuine desire to work for the common good. They have known well the vote-getting value of this part of their progressive programme, how to make it popular on the hustings, and how to placate with tariff taxes and local improvements the business world. And as experience has revealed defects and shortcomings in the original Act, amendments have been brought in to cure these defects and then amendments to these amendments.

In its present form, the Industrial Conciliation and Arbitration Act of 1908 returns to the earlier conciliation boards, fallen into disrepute and disuse for some years, and adapts to the New Zealand scheme of arbitration the present Victorian principle of conciliation.

Fifteen years of experience and of experimenting have brought Victoria and New Zealand very close together. Victoria, starting with Special Boards of conciliation only, in 1898 instituted an appeal court of final jurisdiction, while New Zealand, its Court of Arbitration, having been divested of its original jurisdiction, now returns to Councils of Conciliation, with court and compulsory arbitration to be appealed to, only if conciliation fail.

The present New Zealand law is found in the 131 sections of the 1908 "Act to Consolidate Certain Enactments of the General Assembly Relating to the Settlement of Industrial Disputes by Conciliation and Arbitration," and in the 74 sections passed at the same session of Parliament, "To amend the Industrial Conciliation and Arbitration Act, 1908."

The general administration of the Act is vested in the Minister for Labor, and under him in the Secretary for Labor, who fills



the office of Registrar. Any incorporated company of employers or any society "consisting of not less than three persons in the case of employers, or fifteen in the case of workers, lawfully associated for the purpose of protecting or furthering the interests of employers or workers," or any trade union, may be registered as an industrial union under the act upon compliance with strict regulations as to meetings, appointment of officers, the mode in which industrial agreements shall be executed by the union, the use of a seal, the control and investment of the property, the audit of accounts, the registration of members and the mode in which and the terms on which persons shall become or cease to be members and the conduct of the business of the society at some convenient address to be specified. Having satisfied the Registrar upon these points, the society is registered and becomes as from the date of registration, "but solely for the purpose of this Act," a body corporate by the registered name, having perpetual succession and a common seal. All this the New Zealand unions make little objection to, repugnant as this incorporation and this detailed state supervision would be to American unionists. The New Zealand arbitration law, and the liberal interpretation of that law by the New Zealand Court of Arbitration, have conferred much prized privileges upon the industrial workers of New Zealand, in return for which a considerable state control must be submitted to. Far from being hampered or merely tolerated, the union of workers is encouraged, the state protects and fosters them, and often through its court adjudges that as between equally skilled and available applicants for employment, an employer must select the registered union man. And he may not in New Zealand as he could in New South Wales quibble over technicalities and observe merely the letter of the law. At his peril he must inform himself whether the application book kept in the union's registered offices contains the names of candidates presumably competent to accept his offer and ready to do so upon reasonable notice. But in return for so "obstructing" employment, the state has conferred certain exceptional advantages upon employers. In addition to the minimizing of losses, the advantage of which has inured to

employees and to the general community along with employers, this "preference to unionists," and above all the uniform limitation of hours of employment and the fixation of wages, have put all competing employers at the same starting point. Manufacturers and even the most outspoken opponents of all this state regulation agree that in two points the New Zealand arbitration act has been a success. Thanks to it, "sweating" has been eradicated in New Zealand, to the especial improvement of the lot of women workers. And employers now feel that in the matter of wages they are all in the same boat. None, any longer, will be able to win out over another by steering his individual enterprise closer than his competitors could or would to the perils where so many an industry goes down in disaster. Gross underpay and long hours of overwork all must keep clear of.

If any will not, the very simple, inexpensive and quick remedy lies at hand—Councils of Conciliation; and if those prove ineffective, there is the Court of Arbitration. Any party in interest may apply to a Commissioner of Conciliation to convene a Council of Conciliation, before which the disputed matters shall be heard. Each Council is created as the need for it arises, and when its work is accomplished it is thereupon dissolved. Only the office of the chairman, the Commissioner of Conciliation, has any permanency. He holds a salaried appointment from the Governor for three years, and exercises jurisdiction in one of the four industrial districts into which the Dominion is divided.

When a Council of Conciliation has been applied for, employers and employees each nominate one, two, or three representatives whom they wish the commissioner to appoint as "assessors" to form with him a Council of Conciliation. Each nominee "must be or must have been actually and *bona fide* engaged or employed either as an employer or as a worker in the industry" in respect of which the dispute has arisen, or any member of an industrial union or association which is party to a dispute, whether ever occupied at the trade or not, may serve as such an assessor. And this exception is a most important amendment to the original draft of the 1908 Act. For where a trade does not call for many workers, and these few are further grouped into separate unions



according to industrial districts, the whole time of a secretary is not needed by each union, nor are these small unions able to bear the expense of the whole salary of a secretary. It results, therefore, that in New Zealand one man will sometimes be the union secretary in from three to ten different trades, in only one of which has he himself been employed. These secretaries, then, would have been kept off the Council of Conciliation, had the Councils been limited in membership, as employers, bitter against "labor agitators," first demanded. Fortunately better counsels prevailed, for it is too much to expect of the rank and file of workers in small industries that, closeted with their employers, day after day and perhaps week after week, they shall be able to insist unflinchingly for their rights, without fear, for themselves, of blacklisting if they offend those who might deprive them of their livelihood, or with no regard to the taunts and insinuations of their fellows, if a compromise is consented to. The paid secretary of the union comes to such a conference free and unafraid, experienced in debate and primed with knowledge of the law. He gives confidence to the other members on his side and often bears the brunt of the attack. It is he who accepts most of the blame or claims most of the praise, when the labors of the Council are ended.

Once constituted, a Council has power to examine witnesses under oath and to require the production of books and papers, but no person may be required to disclose trade secrets, or the profits or losses of his business. The procedure of the Council, which "shall in all respects be absolutely in the discretion of the Council," is marked by informality, and throughout the injunction of the statute is seldom lost sight of that "it shall be the duty of the Council to endeavor to bring about a settlement of the dispute, and to this end \* \* \* expeditiously and carefully to inquire into the dispute and all matters affecting the merits and the right settlement thereof."

an agreement is reached by the parties in the course of the  
e terms of the settlement are formally set down in  
d with the clerk of the industrial district where  
must be for a term specified; and



while this term may not exceed three years, the agreement continues in force until superseded by another agreement or by an award of the Court, unless the registration of the industrial union, party to the agreement, has been cancelled.

It was one of the most frequent complaints leveled by the workers against the arbitration act before its general amendment in 1908, that a substantial denial of justice resulted from the long delay of the Arbitration Court in rendering its decisions. This was the excuse offered by the slaughtermen and accepted by a large part of the New Zealand community for the slaughtermen's strike of 1907. The men making their demands for increased pay, when any delay would have meant heavy loss to the sheep packers, obtained their terms. To the indignant protests of employers and of a part of the press and public, they pointed out that the over-worked Arbitration Court could have heard their case only after a six months wait, at which time all the season's work would have been finished and a large number of the slaughtermen themselves scattered to their homes in other industrial districts and in Australia. The new act obviates all this. Councils of Conciliation must be speedily convened upon proper application being made therefor, and thereafter "not earlier than one month or later than two months \* \* \* the Council shall, unless a settlement of the dispute has been sooner arrived at, \* \* \* deliver to the Clerk of Awards for the industrial district in which the dispute has arisen a notification, under the hand of the Commissioner, that no settlement of the dispute has been arrived at." Then the case is ready for the Arbitration Court and, thanks to the clearing of the court's calendar by having magistrates courts now to enforce awards and the Councils first to sift all disputes, the Court is ready for the case. Certainly if the state is to stand between employer and employed, regulating the conduct of each, telling the one what he must pay and the other that he may not strike, it must at the very least be ready to hear both parties with dispatch, whenever applied to.

The costly, long-drawn-out proceedings that disgusted the workers of New South Wales with the old Wise Act as administered by the Wade government furnish a convincing object

lesson here. The delays of the law are proverbial, but when carried into the industrial field they turn statutes for the conciliation of labor disputes quickly into particularly effective means for aggravating labor disputes.

The new act carries conciliation on still another step beyond the old, by copying the provision of the Canadian law for public notice of the Councils' findings when it has been impossible to bring the parties to an agreement. A recommendation may be made and published by a Council, the assessors being all agreed, and the Commissioner here having no vote in respect of the making or nature of any such recommendation, for the settlement of the dispute, according to the merits of the case. And further, the Council may state whether in its opinion "the failure of the parties to arrive at a settlement was due to the unreasonableness or unfairness of any of the parties to the dispute."

But New Zealand, unlike Canada, applies this provision not only to disputes involving public utilities, but to all industrial disputes, and then goes far beyond Canada or any of our American conciliation schemes with its Court of Arbitration. A judge, usually taken from the Supreme Court bench and holding office for life, and two "nominated members," holding office for three years and appointed from nominees presented by employers and employees respectively, constitute the Court. The authority of the court is final, and its jurisdiction is wider and its procedure somewhat more formal than is the case with the Councils. It is the one court for all of the industrial districts. These it regularly visits on circuit and its awards become binding, not only upon the parties in action but upon everyone, employer or employed, who is "whilst the award is in force connected with or engaged in the industry to which the award applies within the industrial district to which the award relates." And this broad power to lay down a common rule for the whole of an industrial district may be still further extended. For where the majority of workers or employers in an industry are already bound by an award and their products enter into competition in any market with those manufactured in another industrial district not bound by the original award, the Court has authority to amend the



provisions of an award, so as to join and bind these employers and workers in such other district.

Parliament has left it entirely to the Court to decide what standards it shall adopt, and what methods it shall make use of in arriving at its judgments. It does not seem to have hesitated to confer executive, legislative and judicial functions upon this court of appellate and final jurisdiction. Common sense rather than common law controls this unique tribunal. In its early days its awards were generally in favor of the workers in their demands—now for shorter hours, now for more pay, or again for enforcement of fines against employers for breaches of the act or of awards. Later the men were not so often successful, and now the point seems to have been reached where little more in the direction of wage increase may be looked for.

It is difficult to determine what principle the Court has followed in fixing these gradually increasing wages. The various judges who have at different times presided over the Court disclaim for their judgments any basis of profit-sharing. Nor do they seem to have taken more than general notice of increasing cost of living, though this point is often emphasized by the trade union representatives in argument before the Court. The customary wages in the industry under review and in others of a similar nature have some bearing on the results reached, but in general it evidently has been a case of "charging what the traffic will bear," or as Judge Heydon of Sydney stated it, the men are given what in the Court's opinion they might have secured without a court, considering their own union strength and the resisting power of their employers.

But whatever the basis, employers must obviously object to awards requiring them to pay more in wages just as employees will hardly submit to awards in reduction of their pay. Almost of necessity the Court of Arbitration becomes a court of compromise, and rarely can hope to gain more than the qualified approval of either party.

Yet the objections of employers to increased court-fixed wages is not as general nor as genuine as at first appears. Many an employer will say in so many words that he cares very little



what wage the court may fix. If wages go up, prices very soon will follow. The widely read newspapers of the Dominion, always reporting and commenting upon proceedings under the arbitration act, carry a general notice to the whole community that the cost of production has increased. If millers be awarded six pence more per day in wages, the increase is promptly reflected in the barrel of flour. But the reflection is distorted and the sixpence grows to very curious proportions. It once happened that one coal mine owner was saved by this "increased cost of production" from threatened bankruptcy, and with prices confidently raised to the public following a Court award increasing wages, was enabled to turn failure into affluence.

And so in New Zealand this act of compulsory arbitration and attempted conciliation creates less discord than might be expected. The closely organized employers, usually on the defensive, of course must oppose all claims that organized labor from time to time advances, while the unorganized consumer reads his paper undisturbed by any interruptions of business and decides that "the foreigner" will have to be taxed a little more. For the New Zealander is persuaded beyond all doubting that if he will but try it long enough, he will finally lift himself up by his own boot straps.

But whatever the final result of raising wages without regulating prices, and whether we guess with the Government that wages have increased most, or, with the Opposition, that prices have increased more, co-existent with the Arbitration Act two advantages have come to the New Zealand public. The one, the abolition of sweating, unquestionably may be credited to the Arbitration Act and its complementary Shops and Factories Acts; the other, the often made claim that strikes have been prevented by this legislation, is a matter for more qualified assent.

Just previous to the general amendments of 1908 all in New Zealand had concluded that the old act no longer would serve as a strike preventive. The strikes of the slaughtermen, of the Auckland tramway men, of the Wellington bakers, and of the west coast miners, furnished proof, if any were needed, that the contention employers had repeatedly made was well founded.

The act did hold employers whose property could always be attached, but it could not be enforced against the men. A considerable proportion of the fines imposed against the striking slaughtermen were, it is true, ultimately collected, and property of individual miners was sold to satisfy the judgment against their union for its defiance of the law; but it was plain to every one, in spite of the almost frantic efforts of the Government to save its face, that the Arbitration Act could not maintain industrial peace between capital, irritated and exasperated, and labor, defiant, awakening to the belief that fifteen years of court awards in its favor had resulted in a diminution rather than an increase in the purchasing power of its wages. Many in and out of Parliament advocated that the act should be thrown overboard entirely, so much dissatisfaction was there found with it. But the general public were in no sympathy with such an extreme remedy. It was apparent now to everyone that, if for a dozen years New Zealand had been "a country without strikes," causes other than the statutes had had a material part in that result.

But the community desired, and the Government was determined, to try some readjustments in order that employer and employed might generally settle their differences by reason rather than by force. At one time the Government seriously declared it would make striking an offence punishable by imprisonment. At another, "a needs wage," an improved minimum wage, and a higher, "exertion wage" were advocated, while the administrative machinery of the Act of Arbitration and the whole basic theory of conciliation boards and arbitration court came in for criticism, not always as wise as it was heated. The Government's bill at last brought down by the Minister for Labor was hardly recognizable as it was amended by the Labor Bills Committee of the Lower House. Then, when reported in committee of the whole, the Government had eight printed foolscap pages of amendments to propose and one private member had as many as 52 amendments of his own to offer. Finally emerging from the Lower House, it passed into Committee of the Legislative Council, where after three days of new amendments it was heard before the Upper House for more amendments still, and was at last reported back to the Lower House, which refused to accept the bill in its



new form. A joint conference of the two houses was unable to agree, and then a second conference and the Act at last!

Now all this was being watched, speeches were being made in Parliament, unions of workers and of employers were passing resolutions, leaders were appearing daily in the press, arbitration, conciliation and strike prevention were being discussed wherever were gathered together two or three men—or women, in this land of adult suffrage. And just there was seen the result of the old act and the hope for the new one. The public almost to a man—and a woman—had grown accustomed to the appeal to law for the settlement of these contracts of employment. A return to the old methods of strikes and lockouts would have received no more support than a proposal to annul the statutes against burglary because some men still stole.

No features of the Act as it was going through Parliament were subjected to such criticism as the strike clauses. In the final compromise form, imprisonment for striking had been discarded, and fines and penalties were relied on alone. For “unlawful” strikes or lockouts, i. e. strikes or lockouts by parties bound by an award, employees are now liable to a fine not exceeding \$50, employers to \$2,500. For instigating, inciting, aiding or abetting an unlawful strike or lockout or its continuance, any worker may be subjected to a fine of not more than \$50, and all others, whether unions of workers, unions of employers or individual employers, may be fined \$1,000.

Special penalties, not exceeding \$125 in the case of employees and \$2,500 in the case of employers, are imposed in the case of all strikes or lockouts in any of the following occupations unless within one month before such strike or lockout fourteen days previous notice in writing is given to the other side:

- A. The manufacture or supply of coal gas;
- B. The production or supply of electricity for light or power;
- C. The supply of water to the inhabitants of any borough or other place;
- D. The supply of milk for domestic consumption;
- E. The slaughtering or supply of meat for domestic consumption;
- F. The sale or delivery of coal, whether for domestic or industrial purposes;
- G. The working of any ferry, tramway or railway used for the public carriage of goods or passengers.



For aiding or inciting to strikes or lockouts in these services of exceptional public utility, fines heavier than in other cases are also imposed, \$125 in the case of single workers, \$2,500 in the case of employers, organized or unorganized, and of trade unions.

In addition to these money damages against individual and organized workers, the registration of any union of workers may be suspended for a period of not more than two years for striking or for abetting or inciting strikes. And this power of suspension is a very effective corrective in the hands of the Court. It carries with it suspension of any award or industrial agreement at the time in force and bars the suspended union from "instituting or continuing or of being a party to any conciliation or arbitration proceedings \* \* \* or of entering into any industrial agreement, or of taking or continuing any proceedings for the enforcement of an award or industrial agreement."

Such are the main provisions now relied upon to prevent strikes in New Zealand. Thus far the new act has fulfilled the most sanguine hopes of its sponsors and again New Zealand has become "a country without strikes." Now, after fifteen years, during which unforeseen defects in the first act and subsequent amendments had substituted arbitration for conciliation, conciliation is again returned to with the failures in New Zealand and the successes of the Victorian Wages Boards to point the way to better results.

These Special Boards of Victoria, or Wages Boards as they have come to be known, are of a type much like the Councils of Conciliation now become the mainstay of the New Zealand Act. The two systems are very close to each other in basic plan. With both, disputes must first be heard by a conciliation tribunal whose awards are effective only in so far as they are agreed to by the parties, and the conciliators themselves are employers and employees who from practical personal experience are conversant with the trade on which they are called to sit in judgment.

But in Victoria there is no division into industrial districts with salaried appointees of the Governor, ready when called upon to summon a Council in any dispute, in any industry, within a single district. The Special Boards of Victoria are appointed by Parlia-

ment from time to time upon representation made to it by employers or employees, or on the reports of the officers of the Factories Department. Upon the adoption by both Houses of a resolution, usually introduced by the Minister for Labor, for the appointment of a Special Board, an Order in Council is passed constituting the board, and indicating the number, not less than four nor more than ten, that shall sit on the board. Employers or employees then nominate by mail their respective representatives. From these nominations the Minister for Labor makes up the board and then invites the members to meet for the election of their own chairman and secretary, to decide upon the mode in which they shall carry on their business. While every member of the board must be, or must have been, connected as employer or employee with the trade or occupation for which the board has been constituted, the chairman may be any disinterested person elected by the members. And the successful issue of the board's deliberations will very largely depend upon the tact and ability that this chairman can display. Although he has not the advantage of the New Zealand Commissioners of Conciliation, of a definite term of office, and loses thus something in experience and authority, yet the practice is to appoint over and over again as chairman of different boards a few men who have proved themselves most capable, and thus the two systems are guided in the main by men of much the same calibre.

Neither are the Victorian boards as open to objection as might at first appear, on the ground that the union may not be represented by a paid secretary, unless he is or has been actually engaged as an employee in the trade affected. For in Victoria, in the first instance, these special boards sit not for a district but for the whole state; nor are the unions of Victoria split up into small sectional groups. Far from that, an overwhelming proportion of the factory operatives working under board determinations are concentrated in the four principal cities of Victoria, which together contain 60 per cent. of the entire population of the state, with Melbourne alone holding nearly 43 per cent. of the population and employing in its 2,569 factories, 65,951 persons, to the 19,288 persons employed in factories in all the rest



of the state. Under such different conditions these unions have a larger membership than in New Zealand and union secretaries in Victoria are usually graduates from the ranks of the unions which they represent. Unpalatable as it may be to some to have "labor agitators" on conciliation tribunals, it is hardly to be denied that without them the scales of justice are not to be held even between the employer on the one side, confident, self-possessed, knowing all the branches of the industry he is called to represent, and the highly specialized employee, afraid, perhaps, of antagonizing the man on whom depends his livelihood, and not sure that his shopmates will not suspect him, if he consents to compromises. The labor secretary who fears no blacklist, who has a wider view of the trade than one who has kept his eye on one machine while training his hand to keep up to its increasing pace; who has met before in conference men of superior education and fortune, and who can not only feel the grievances of his side but articulate them—such a man is needed for labor upon these Victorian Special Boards at times. Yet in the majority of cases the boards proceed in their business in a manner apparently satisfactory to all parties concerned. The first few meetings often result in nothing more than a display of temper on both sides, which the experienced chairman will bear as a necessary preliminary. And then the members will settle down to their business and dispatch it with an understanding and celerity that is in itself one of the strongest arguments for such boards of experts, as against a judge learned in the law and knowing industrial conditions only by hearsay. No detail is too small for consideration, no point too technical for some of these conciliators to discuss with understanding.

The proceedings of the Saddlery Board is a case in point. Here were half a dozen employers and employees meeting together two or three evenings a week and working over the amendment of a "log" of forty-three printed pages and of over 3,000 items in an endeavor to make the piece-work rate formerly fixed correspond more exactly with day wages fixed at forty-eight shillings per week of forty-eight hours. The former determination had established this minimum wage, the proportion of improvers, male and female, to be employed, the rates of wages



to be paid to them and to apprentices on a gradually ascending scale from the first year to the seventh, overtime rates, the wages of females, and a general ruling as to piece-work and the exact meaning of terms employed. Then, point by point, were being taken up by the Board the various schedules with their sub-classifications and detailed enumerations under each.<sup>1</sup>

In discussing the relation between the established minimum day's wage and the piece rate, the contention of the employers was that the men could earn far more than the minimum forty-eight shillings per week at the existing rate, if they would do a fair day's work. The workers as generally insisted that the rate fixed previously resulted in a weekly wage ranging between forty-two and forty-five shillings in spite of the law of the land

<sup>1</sup> Schedule No. I deals with riding saddles, and under this twenty different kinds of saddles are covered with careful detail.

The following is a fair sample of one of the sub-divisions under this schedule:

*Common Park, and Exercise Saddles.*

Seat snowed and franked, short skirts, stitched to end of back, skirts stitched eight to inch, flaps stitched seven to inch, leather front to pads, pannel four rows below point pocket, straps and sweat flaps not edged or creased, two staples and three dees:—

	£	s.	d.
Seat—Making and drawing on, which includes cutting pattern flap and pannel.....	0	5	6
Flaps—Making and finishing, without stitching.....	0	3	0
Pannel—Making and finishing, without machining.....	0	2	6
Putting together, making dee chapes, straps, sweat flaps and sewing on same.....	0	1	6
	0	12	6 or
If given out in quantities of not less than four saddles at one time.....	0	11	0 each.
If stitching flaps, skirts, forepart and point pockets, 1s. 6d.; machining facing and serge of pannel, 9d.; and sewing serge on pads, 3d.; are done by workman .....	0	2	6
If seat skirted all round.....	0	1	0
If seat set .....	0	1	0
If flaps are made without knee-pads.....	0	2	0
If flaps are made without thigh-pads.....	0	0	6

Other schedules follow equally explicit under each of their sub-divisions, as: Schedule No. II, Ladies saddles, 10 types. Schedule No. III, Harness, black or brown, 96 sub-divisions. Schedule No. IV, Bridles, 58 divisions. Schedule No. V, Horse collars, 14 types.

as enunciated by the Special Board whose determination was now under review. An employer would cite some special workman whom his books showed to be earning well over the minimum, whereat employees would give half a dozen instances of others in other shops earning less. Each side seemed to wish to form general rules from exceptional cases, and then each gave in a little and a compromise was effected and the board passed on to another item. The minimum wage was without question considered by all as the standard wage. The chairman took no part in the discussions, and only shut off those who had no personal experience of the points in issue by bringing the board to a vote.

There are in Victoria fifty-one of these Special or Wages Boards whose determinations, when finally made and signed by the chairmen, are forwarded to the Minister of Labor. If the Minister approves of the determination, it is duly gazetted and goes into effect upon a date fixed but not within thirty days of its signature by the chairman. Should the Minister disapprove of the board's recommendations on the broad ground that it might cause injury to trade or an injustice, he may suspend the determination for six months or less, during which time the board must reconvene and reconsider. A determination then goes into effect either by an alteration of the board's judgment in accordance with the Minister's views, or, if the board after consideration of those views still adheres to its former decision, the suspension may be removed by notice in the *Government Gazette*.

This interference by the executive with the judgments of bodies clothed by Parliament with quasi-judicial authority is, however, now little more than a curiosity in legislation, as a Court of Industrial Appeals may be constituted by the appointment of any one of the judges of the Supreme Court upon application therefor made by a majority of representatives either of employers or of employees on a Special Board, or by any employer or group of employers hiring not less than 25 per cent. of the workers in the trade affected, or by 25 per cent. of the workers in such trade. A further check upon the independence



of the boards is found in the power of the Minister for labor to refer any determination to this court upon his own initiative without application from employers or workers.

These limitations by minister and court upon the powers of the boards are, however, more apparent than real. It is not to be supposed that any such interference would take place or be tolerated except in extraordinary cases. Employer and employed, persuaded at last that "their rights were one" and combining as against the innocent third party, the public, would be a possible contingency thus to be met. Or,—and here we reach a case of more likely occurrence,—a decision reached through the casting vote of the chairman might well be so distasteful to one side that any system founded on equity must grant a rehearing before a judge of competent authority, clothed with greater learning and experience than the chairman of a Wages Board is apt to possess.

But the New Zealand scheme seems here the better, not leaving the decision in close cases to the chairman. Under it no award can be made, even tentatively binding, upon the deciding vote of any chairman. There is an element of compulsion injected into conciliation under the Victorian Act which the New Zealand procedure wisely avoids. Compulsion in New Zealand comes later, as a separate and distinct step. And in this connection it is noteworthy that in 1907 in Victoria the first strike of any magnitude in over ten years in a trade under a Wages Boards occurred because of the appeal court's refusal to allow the increase in wages awarded by the Bread Board upon the casting vote of the chairman. In New Zealand such extreme provocation as reducing wages once raised would be avoided. Either they would be raised by mutual consent, from which no appeal would lie, or they would be left unaltered for the Court of Arbitration to fix.

In Victoria the result of this strike of journeymen bakers was to introduce into the Factories and Shops Act the first reference to strikes. The Governor in Council may now suspend the Act for any period not exceeding twelve months, whenever a strike occurred in a trade in which a special board exists, or when in his opinion such a strike is likely to occur. Mr. Harrison

Ord, Chief Inspector of Factories, under whose efficient supervision comes the enforcement of the Act, in commenting on this amendment states: "So far as employees are concerned, the only effect of such a provision is that the men affected run the risk of losing the benefits of the determination of the board, or the court, for twelve months. As regards the employers, however, the results are far reaching. They are at liberty to obtain men at such rates as may be agreed upon, instead of being compelled to pay the rates fixed by the board for possibly inferior and emergency labor."

The Victorian Factories and Shops Act of October, 1896, first making provision for Wages Boards to meet the particular and long-discussed problems of sweating in clothing, shoe, bread-making and furniture shops and factories of Melbourne, has now by gradual amendment been widened out into a strike-prevention act regulating wages in a great variety of occupations, skilled and well-paid, as well as unskilled and under-paid. But beyond the statement that this legislation has reduced gross under-payment and has tended to wipe it out altogether, it is not possible as yet to point out with precision the definite effect of wages boards on general wages. Mr. Ernest Aves, in his Blue Book report,<sup>2</sup> sums up as follows his detailed study of wage changes in board and non-board trades: In the case of males, "the advances in thirteen board trades previous to the determination amounted in the aggregate to 7.6 per cent. on the combined average rates of these trades; in nineteen board trades after the determination the aggregate advance was 16.5 per cent. on the combined averages; and in twelve non-board trades the aggregate advance was 11.6 per cent. on the combined averages." In the case of females "the aggregate advance in the after-determination period for six board trades was equal to 10 per cent. on the combined averages as compared with 8.8 per cent. increase in the twelve non-board trades."

But there are a great many undetermined elements in the problem in Victoria as in New Zealand and what part court-

<sup>2</sup> Report on the Wages Boards and Industrial Conciliation and Arbitration Act of Australia and New Zealand by Ernest Aves, 1908.



fixed minimum wages have played in raising nominal wages no man can surely say, though in neither country are there lacking advocates and opponents of these systems who do not hesitate to try. Certainly wages have risen in New Zealand and in Victoria since the legislation first was put upon the statute books, but the rise appears to be in both countries almost as much in regulated as in unregulated industries. And a fair case may be made out for the claim that such greater extension as is seen in the former cases is as much due to better organization and the higher skill and intelligence of the employees there engaged, as it is to the awards of boards and courts. The organization of labor, the absence of any large fringe of unemployed to act as a constant check on the demands of the employed, the boom in Victorian industries consequent upon the federation of the Australian states into one commonwealth upon which Victoria, the chief manufacturing state of the new confederation, found itself prepared above its neighbors to take advantage of trade now first made free, fat years for wool-growers after lean, terrible years of drought, increasing public borrowing and public expenditures and increasing cost of living; each of these contributed its part, impossible though it is to ascertain what part, to the raising of wages of labor in Victoria. Similar influences were also forcing the New Zealand employers and tribunals to like advances to the workers.

As far as wages are concerned, the Victorian and New Zealand experience seems to show that state intervention in labor disputes, after it has prevented gross under-payment or sweating, has merely followed the general upward tendency of wages in related industries, although by such intervention often wages respond more quickly to increased employer's profits than when labor must wait to press its demands by costly strikes. And the cost and waste of the strike and lockout are saved. This is much, very much, and well worth the attempt to imitate, even though it be less than all labor had expected and employers had feared. With falling markets and with arbitration deciding against the workers, reducing wages and lengthening hours, it is not to be supposed that labor would tamely submit, as employers now do, and must, to awards rendered against them. Strikes would occur

again as they have in New Zealand under such circumstances and proof would be given, if the point is not self-evident, that a law which goes beyond conciliation, the mere free and open agreement of the parties, and imposes compulsion, can not bear equally on both parties to industrial disputes. Nevertheless, in dollar and cents it is to the advantage of employers to have a large proportion of the differences between them and their employees settled without any stoppage of industry, short of perfection and of equal justice though the scheme may be.

In the distribution of wages state regulation has had an effect more susceptible of unquestioned determination. Employers unite in their complaint that the establishment of a minimum wage compels them to raise the wages of the less efficient to such an extent that the wages of the more efficient must be lowered to keep the total wage output in the proper, or former, relation to profits. Employees bear witness to the same effect, that the minimum wage becomes in fact the standard wage. A general levelling down accompanies the general levelling up, but not of course to the extent that skilled labor is not paid more than unskilled or that exceptional ability does not receive more reward than average ability.

Skilled labor, as pointed out by Victor S. Clark,<sup>3</sup> receives in nominal wages something less than skilled labor in America, while unskilled labor receives a little more than the like class here. In other words, there is not that clear and considerable difference between the two classes in New Zealand and Victoria that here is supposed to urge the unskilled to strive toward greater skill and higher pay.

And so as a direct result of minimum Wages Boards and Conciliation and Arbitration Acts is seen a very general control over industry and limitation of old cherished "rights" of employer and employed, that attempts much and accomplishes something less. Sweating has been prevented, strikes reduced to a minimum, wages made the same to all employers, and hours regulated. To the people of these Australian states, taught by their own experience, looking upon the failures of others, regulation of hours

<sup>3</sup> *The Labour Movement in Australasia*, Archibald Constable & Co., 1906.



of labor for women and children, shop and factory supervision against the more cruel risks of industrial accident and disease are not sufficient. Be the factory built with ever so great a regard to hygienic requirements, still the owner must pay his workers a wage which will enable them to maintain themselves in health outside the factory and with due regard to the community's standard of decency and comfort. The doctrine is accepted without hesitation and even is paid for in higher prices without much fault-finding, that the worker, whether man, minor, or woman, needs the protection of the state, must be guarded against overwork and is unable without state aid to avoid the socially harmful over-strain and stress of unchecked competition and unregulated employment.

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## LEGAL LIMITATIONS UPON INTERFERENCE WITH THE CONTRACT RIGHTS OF A COMPETITOR.

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### CONTENTS.

Forms of trade competition classified according to their legal nature, p. 55; malice immaterial in determining the legality of a given act, p. 56; unjustified injury to business as a ground of action, p. 57; what constitutes justification for an injury to business, p. 58; jurisdictions that accept the doctrine of unjustifiable injury to business, p. 60; an act legal for one is legal for any number, p. 68; effect of conspiracy may be to make a given act actionable, p. 70; when inducing the breach of a binding contract is actionable, p. 73; when inducing the breach of a terminable contract is actionable, p. 75; when to induce one not to deal with another is actionable, p. 76.

BY way of defining the scope of this article it may be said that efforts against competitors in business are roughly divisible into four classes, of which the last in the order named is the subject of the present discussion. They are as follows: First—physical injury to the person or property by violence, to which trade war in its bitterest forms sometimes runs. There is no uncertainty as to the lawlessness of such methods and they need no discussion. Second—the imitation of a rival's product or the package in which it is sold or the trade mark or name by which it is distinguished. Such devices are intended to deceive the public and are obnoxious in law as being a fraud upon the public generally as well as upon the person whose goods are imitated. It is to this form of rivalry that the denomination "unfair competition" is applied in its narrowest, technical sense. Third—the solicitation of trade by offers of lower prices, better goods, reciprocal benefits or other fair inducements. Competition of this sort is an absolute right, when pursued for the direct and primary purpose of increasing one's own trade, whatever its consequences may be to any other. Fourth—interference with the contracts or freedom to contract, i.e., to buy, sell, employ and be employed, of a competitor.



The legality of such interference is the subject of this article. There are certain general principles which must be stated before we can proceed with its discussion. The first is that malice, in its common acceptation of evil intent, ill-will, is immaterial in determining whether a given act is illegal. It does not make that illegal which done without malice would be legal.<sup>1</sup> As will be shown, the end to which a given act, in itself lawful, tends may make the act unlawful, if it be the evil end of injury to another's business. The courts perceived this. And as the terms evil end, evil purpose, evil motive and malice, not always strictly synonymous, are commonly used as if they were, it came to be said that malice might change the nature of an act. But as malice, meaning mere ill-will, cannot have this effect, the courts gave birth in an evil hour, after much discussion and refinement of terms, to a thing called "legal malice" which has been an endless source of trouble ever since, because of the uncertainty as to its exact meaning. The phrase is so firmly imbedded in the decisions that it is useless to quarrel with it. It is now generally laid down that there is legal malice where one does intentional injury to the business or trade of another, without just cause.<sup>2</sup> The difficulty arising from using the word "malice" at all is illustrated by the fact that in Massachusetts the courts have said that an injury done "maliciously" may be actionable solely by reason of the malice, but that by malice they do not mean ill-will or an evil mind, but that "maliciously" means "without just cause."<sup>3</sup> In West Virginia the court, directly to the contrary, has said "malice cannot render a legal act illegal" but at the same time upholds the Massachusetts doctrine that an injury done without just cause may be actionable by reason of the lack of just cause.<sup>4</sup> It would seem very much better if the courts would drop the use of the word "malice" and use the

<sup>1</sup> Cooley on Torts, 3d ed., pp. 142 et seq., 1503 et seq. The only real exception is found in an action for malicious prosecution and, perhaps, libel and slander, but in the latter the malice is presumed.

<sup>2</sup> Walker v. Cronin, 107 Mass., 506; Plant v. Woods, 176 Mass., 492; London Co. v. Van Horn, 206 Ill., 493; Thomas v. C. N. O. & T. P. Ry. Co., 62 Fed. Rep., 803.

<sup>3</sup> See last note.

<sup>4</sup> Transportation Co. v. Oil Co., 50 W. Va., 611.

other expression, regarded in Massachusetts as synonymous, and much more exact in its meaning. The following states the principle correctly: *Any positive act done intentionally, and without just cause, which tends to injure another in his trade or business, is in and of itself unlawful, and, if damage ensue, actionable, whatever may be the character of the means by which the injury is done.*

This last proposition is the second of the general principles underlying this discussion. Its general recognition is a matter of comparatively recent history. It is obviously correct. To carry on one's trade or business is a legal right.<sup>5</sup> It is as much a right as the right to one's property. Indeed one's business is property.<sup>6</sup> If a person trespass upon my property he commits a legal wrong, unless he can show a just cause for so doing. By the same reasoning, if he disturb me in my trade or business, he commits a legal wrong unless he can show just cause. Some of the cases to be cited in support of this principle declare that for one or many in combination so to do is illegal,<sup>7</sup> others that for several to conspire so to do is illegal.<sup>8</sup> As will be shown later, the former is the correct statement of the principle. The illegality is the same for one or many. The following acts, done under circumstances held not to afford just cause, have been declared actionable and ground for damages or an injunction, on the express ground that they injured or threatened to injure the persons at whom they were aimed in their trade or business: To induce one who supplies a storekeeper with all his stock in trade for sale on commission to withdraw the supplies;<sup>9</sup> for all the masters in the printing business in a certain city except one to agree with all the workmen in the same line to deal exclusively with one another because the one master refused to join a master printers association;<sup>10</sup> for substantially all the brick manufactur-

<sup>5</sup> Longshore Printing & Pub. Co. v. Howell, 26 Oregon, 527.

<sup>6</sup> Longshore Printing & Pub. Co. v. Howell (supra).

<sup>7</sup> Doremus v. Hennessy, 176 Ill., 608; Purington v. Hinchcliff, 219 Ill., 159; Van Horn v. Van Horn, 56 N. J. L., 318; Delz v. Winfree etc. et al., 80 Tex., 400.

<sup>8</sup> For example: State v. Huegin, 110 Wis., 189.

<sup>9</sup> Van Horn v. Van Horn (supra).

<sup>10</sup> Employing Printers Club et al. v. Doctor Blosser Co., 122 Ga., 509.



ers, bricklayers and builders in a certain county to agree that the builders would buy brick of those manufacturers only and the bricklayers would work only on buildings constructed of their brick and thus drive an outside manufacturer of brick from the market;<sup>11</sup> for union laborers to threaten to strike or declare a boycott unless a non-union employee was discharged,<sup>12</sup> unless a fine imposed by the union upon the employer were paid;<sup>13</sup> to induce workmen to leave their employ;<sup>14</sup> for union men to threaten to strike unless the employer would cease to deal with a third person with whom the union was at war;<sup>15</sup> for its secretary to notify the members of an incorporated trade association that a certain person had failed to pay his debts, where such action was not within the charter powers of the corporation, and thus to prevent the person from getting credit;<sup>16</sup> to induce third persons not to deal with one;<sup>17</sup> to persuade the customers of another to withdraw their custom;<sup>18</sup> to induce certain employees to strike because the employer refused to raise the wages of certain other employees in whom the first were in no way interested;<sup>19</sup> to follow traveling salesmen and underbid them wherever they go and so ruin the business of their principal.<sup>20</sup> Some of these injuries seem to have been from pure malice, using the word in its common sense; but it is not the presence of the malice but the fact that the actor was moved by pure malice, that there was an absence of justification, that gave the right of action. Had there been justification, the malice would have been immaterial.

What constitutes just cause? It will appear from a reading of the series of cases last cited, in which there was held to be no just cause, that the one who induced the withholding of sup-

<sup>11</sup> *Purington v. Hinchcliff* (supra).

<sup>12</sup> *Lucke v. Clothing Cutters and Trimmers Assembly etc.*, 77 Md., 396; *Plant v. Woods*, 176 Mass., 492; *Berry v. Donovan*, 188 Mass., 353; *Reynolds v. Davis*, 198 Mass., 294.

<sup>13</sup> *Carew v. Rutherford*, 106 Mass., 1.

<sup>14</sup> *Thomas v. C. N. O. & T. P. Ry. Co.* (supra).

<sup>15</sup> *State v. Glidden*, 55 Conn., 46; *Pickett v. Walsh*, 192 Mass., 572.

<sup>16</sup> *Hartnett v. Plumbers Sup. Ass. etc.*, 169 Mass., 229.

<sup>17</sup> *Ertz v. Produce Exchange*, 79 Minn., 140.

<sup>18</sup> *Gray v. Building Trades Council*, 68 L. R. A., 753 (Minn.).

<sup>19</sup> *Old Dominion S. S. Co. v. McKenna*, 30 Fed. Rep., 48.

<sup>20</sup> *Spaulding v. Evenson*, 149 Fed. Rep., 913.

plies from the storekeeper acted from pure malevolence, had in fact no cause at all (so far as appears in the opinion); that the master printers who sought to prevent their competitor from getting any one to work for him had no cause but the desire to force him into their association; that the brick manufacturers, bricklayers and builders had no cause for their agreement but the desire to force their competitor out of the market; that the workmen in the various strike cases (where any cause for the strike appears in the opinion) had no cause other than to compel non-union men to join the union, or to compel the employer to pay a fine imposed on him by the union without any authority, or to cause the employer to cease dealing with some third person with whom the union had a trade dispute over some matter in which the employer was in no way concerned, or to compel the employer to raise the wages of someone in whom the strikers had no direct interest; that in the case of the incorporated trade association notifying all its members to suspend the credit of the alleged debtor, and in the case of the underbidding of the traveling salesman there was no advantage to be gained for the persons inflicting the injury, unless by and through the injury and ruin of the persons at whom the acts were aimed, no advantage independent of that injury. It appears that in none of these cases did the person who did the injury or induced another to do it look for any direct benefit for himself or for that other from his act but that his primary object was to inflict the injury. Whatever gain he sought was an indirect and comparatively remote one not flowing to him directly from the infliction of the injury, or, if it was a direct benefit, it was one to which he had no legal or moral right, as in the case of the strike to compel the payment of the fine. It has been said that under the following circumstances acts injuring business are done with just cause: A strike to procure higher wages or better conditions for the strikers;<sup>21</sup> one to procure all of a certain piece of work for the strikers which at the time was being divided between themselves and others;<sup>22</sup> to procure the discharge of a fellow workman whose habits make

<sup>21</sup> *National Protective Ass. v. Cummings*, 170 N. Y., 315.

<sup>22</sup> *National Protective Ass. v. Cummings* (supra); *Pickett v. Walsh* (supra).



him obnoxious,<sup>23</sup> or whose lack of skill or care in a dangerous occupation make working with him unsafe;<sup>24</sup> to procure men to strike for higher wages;<sup>25</sup> to underbid a competitor even at ruinously low rates in order to wrest business from him for oneself;<sup>26</sup> for a combination of steamship owners to refuse to deal with a shipping agent unless the latter would procure shipments for their boats only.<sup>27</sup> It is observable that in every one of these cases the person causing the injury did it for the sake of gaining a direct, lawful advantage for himself, or where one induced others to do the injury it was for the sake of a similar advantage for them, independent of any remote advantage to be gained from the mere injury itself. It is the design to gain this direct and lawful benefit to the doer of the injury that is "just cause."<sup>28</sup> The doctrine is most clearly stated in *National Fireproofing Co. v. Mason Builders Association*, 169 Fed Rep., 259 (decided in 1909). The question at issue was whether an agreement among persons in the building trade that operated to exclude the building material manufactured by plaintiff from a certain market was actionable. The court said "The direct object or purpose of a combination furnishes the primary test of its legality . . . . And so the essential question must always be whether the object of a combination is to do harm to others or to exercise the rights of parties for their own benefit." And that is the test of the legality of any act, whether done by one or many, not in itself illegal, which inflicts intentional injury upon one's trade or business.

In the following jurisdictions the doctrine that one is liable for an unjustified injury inflicted intentionally upon the business of another is expressly declared: Great Britain,<sup>29</sup> Connecticut,<sup>30</sup>

<sup>23</sup> *Berry v. Donovan* (supra).

<sup>24</sup> *National Protective Ass. v. Cummings* (supra).

<sup>25</sup> *Rogers v. Evarts*, 17 N. Y. Supp., 264.

<sup>26</sup> *Mogul S. S. Co. v. McGregor*, 23 Q. B. D., 298.

<sup>27</sup> *Mogul S. S. Co. v. McGregor* (supra).

<sup>28</sup> See cases cited in notes 9-27 and *Allen v. Flood*, 1901 App. Cases, 1.

<sup>29</sup> *Mogul S. S. Co. v. McGregor* (supra); *Temperton v. Russell*, 1 Q. B. D., 715; *Quinn v. Leathem*, 1901 App. Cases, 495; *Allen v. Flood* (supra).

<sup>30</sup> *State v. Glidden*, 55 Conn., 47; *State v. Stockford*, 77 Conn., 227.

Illinois,<sup>31</sup> Louisiana,<sup>32</sup> Maryland,<sup>33</sup> Massachusetts,<sup>34</sup> Minnesota,<sup>34a</sup> New Jersey,<sup>35</sup> West Virginia,<sup>36</sup> Wisconsin,<sup>37</sup> and Ohio,<sup>37a</sup> and the Federal Courts.<sup>38</sup> Decisions in the following States seem to render it probable that the doctrine will be adopted there when any case involving it arises: Colorado,<sup>39</sup> Florida,<sup>40</sup> Georgia,<sup>41</sup> Michigan,<sup>42</sup> North Carolina.<sup>43</sup>

<sup>31</sup> *Doremus v. Hennessy* (supra).

<sup>32</sup> *Graham v. R. R. Co.*, 47 La. Ann., 214; *Webb v. Drake*, 52 La. Ann., 290.

<sup>33</sup> *Lucke v. Clothing Cutters and Trimmers Assembly etc.* (supra); *Klingel's Pharmacy v. Sharp etc.*, 104 Md., 233.

<sup>34</sup> *Walker v. Cronin* (supra); *Plant v. Woods* (supra); *Carew v. Rutherford* (supra); *Berry v. Donovan* (supra); *Pickett v. Walsh* (supra).

<sup>34a</sup> See next paragraph of text.

<sup>35</sup> *Barr v. Essex Trades Council*, 53 N. J. L., 101; *Van Horn v. Van Horn* (supra).

<sup>36</sup> *Transportation Co. v. Oil Co.* (supra).

<sup>37</sup> *State v. Huegin* (supra).

<sup>37a</sup> *Moores & Co. v. Bricklayer's Union et al.*, 23 Weekly Cin. Law Bul., 48.

<sup>38</sup> *Old Dominion S. S. Co. v. McKenna* (supra); *Thomas v. C. N. O. & T. P. Ry. Co.* (supra); *Arthur v. Oakes*, 63 Fed. Rep., 310; *Loewe v. Calif. State F. of L.*, 139 Fed. Rep., 71; *Allis-Chalmers Co. v. Union*, 150 Fed. Rep., 155, 171; *Spaulding v. Evenson* (supra); *National Fireproofing Co. v. Mason Builders Ass.*, 169 Fed. Rep., 259; *Aikens v. Wisconsin*, 195 U. S., 194; *Sperry etc. v. Weber & Co.*, 161 Fed. Rep., 219.

<sup>39</sup> *Master Builders Ass'n v. Damascio*, 16 Colo. App., 25 (1901). A refusal on the part of an association of builders to bid for a certain contract, if a bid were entertained from a certain non-member, held not actionable on the ground, *inter alia*, that there was nothing in the agreed state of facts to show an intent to ruin the business of the plaintiff.

<sup>40</sup> *Chipley v. Atkinson*, 23 Florida, 206. Holds that "merely to persuade a person to break his contract may not be wrongful in law or in fact; still, if the persuasion be used for the indirect purpose of injuring the plaintiff or benefiting the defendant at the expense of the plaintiff, it is a malicious act, which in law and in fact is a wrongful act, and therefore an actionable act, if injury issues from it." (N.B. If the invasion of contract rights under these circumstances is actionable the invasion of one's property right in one's business should be equally so.)

<sup>41</sup> *Employing Printers Club et al. v. Doctor Blosser Co.*, 122 Ga., 509 (1905). Held that an agreement between all the master printers in a certain city except one and all the journeyman printers that they would deal exclusively with one another was illegal, among other grounds, because it was an illegal agreement to injure the business of the one master printer not a member of the association.

<sup>42</sup> *Morgan v. Andrews*, 107 Mich., 33 (1895). Approves *Chipley v. Atkinson* (supra) and holds that maliciously to prevent the consummation of a contract is actionable and that "maliciously" means "without just cause"; *Beck v. Union*, 118 Mich., 497.

<sup>43</sup> *Holder v. Manufacturing Co.*, 135 N. C., 392 (1904). Held, in an action for damages for procuring discharge of plaintiff from his employment, that such procurement without lawful justification is actionable. (See writer's comment on *Chipley v. Atkinson*, supra.)



In Minnesota, in the case of Bohn Mfg. Co. v. Hollis, 54 Minn., 223 (1893), the following facts were considered: An association of retail lumber dealers whose object was to prevent wholesale lumbermen from selling direct to consumers, to the exclusion of the middleman, adopted by-laws forbidding any member under pain of expulsion to patronize any wholesaler so doing. A wholesaler, who did sell direct to a consumer and refused to pay a fine imposed upon him by the association, was threatened that the members of the association would be notified not to deal with him. He procured an injunction against the sending of these notices, but it was dissolved on appeal. Subsequently a second case came up in the same State (Ertz v. Produce Exchange, 79 Minn., 140, decided in 1900) in which the complaint alleged that all the wholesalers of certain commodities "maliciously" agreed not to sell to defendant, a retailer in the same line, and induced others outside the city not to sell to him and so prevented him from doing business. A judgment overruling a demurrer was sustained. In the first case the court held that there was nothing actionable in the mere demand for the payment of the fine, nor in the refusal to deal with the plaintiff, nor in the provision of the by-laws for the expulsion of any member who should deal with him; and none of these acts being in themselves unlawful, the mere fact that they would have caused loss to the plaintiff did not make them unlawful; that malicious motive will not make wrong an act which in its own essence is lawful. It was further held that there was no interference with any of the plaintiff's legal rights. The second case was declared to be distinguishable from the first in this,—first, that the defendant wholesalers were protecting no legitimate interests in cutting off the supplies of the retailer, and, second, that they not merely agreed among themselves not to supply him but induced third parties not to supply him. Now if we are to accept the doctrine of the first case, that an injury is not actionable unless caused by an act in itself essentially unlawful, then we must reject the second ground of the opinion in the later case, for there is nothing intrinsically unlawful in inducing one person by fair persuasion not to deal with another.

There are circumstances under which such an act may be wrong but others under which it may be wholly proper, as where the purpose of the persuasion is to get the person to deal with oneself; the thing that determines the character of the act is the immediate object sought. Nor is such an act made unlawful by the allegation that it was done maliciously. The first case makes that position untenable, for it correctly holds that malice is immaterial. We are thus thrown back upon the first ground of distinction, that the retail lumber dealers in refusing to deal with a wholesaler who sold to consumers direct were merely protecting their own legitimate interests in fighting against the elimination of their class, while the wholesalers in the second case protected no such interest in withholding supplies from a retailer with whom they had presumably no competition. It is submitted that this is the only valid distinction between the two cases, that it rests solely upon the principle for which we are contending; that the legality of an act injurious to one's business depends in such a case upon whether it is justified by any direct competitive advantage gained, and it is not legal merely because the means used are legal; and that these two decisions of the Minnesota court are utterly irreconcilable except upon that principle, which has been adopted in another case.<sup>44</sup>

It is a question whether the end sought by the retail lumber dealers was, in fact, such a direct and lawful benefit as should have justified the doing of the injury, although in effect the court so rules in holding that they were protecting their legitimate interests. But that does not affect the principle. In an Indiana case where the facts were identical with those of *Bohn v. Hollis* (supra) except that the offending wholesaler paid his fine and thereafter refused to sell any more lumber direct to the consumers in question for fear of losing the patronage of the association, and the consumers were injured and sued the member of the association who first set it in motion for damages, *Bohn v. Hollis* was disapproved and judgment was rendered against the association on this ground, that the coercion exercised by the association upon the wholesaler by the threat to

<sup>44</sup> *Tuttle v. Buck*, 119 N. W. Rep., 946.



withdraw from him the patronage of its members and upon the members themselves by the threat of expulsion, if they patronized an offending wholesaler, was unlawful coercion. This is the point upon which the court dissented from the opinion in the Bohn case. But is it not obvious that upon this point the Bohn case is right and the present opinion wrong? There is nothing essentially unlawful in the expulsion of a member from a purely voluntary association for not obeying a rule of which he had full cognizance when he entered, nor, as we have seen, is there anything essentially unlawful in an agreement among several not to deal with a particular person. If the association was liable for these acts it was because of some additional element, i.e., the element of unjustified injury caused thereby to the plaintiff's business. (The plaintiffs have been referred to as "consumers." They were so according to the definition of "consumer" adopted by the association. They were in fact brokers in lumber and dealing in lumber was their business.) No other ground could, in reason, support the conclusion of the court. That conclusion appeals to one's sense of fairness and right and, in the writer's opinion, is correct, the end sought not furnishing any such direct benefit as to constitute just cause, and the decision in the Bohn case being against the weight of reason.<sup>45</sup>

It must be admitted that the weight of opinion is against the view here expressed as to the intrinsic lawfulness of compelling members of an association, which has agreed not to deal with a particular person or class, by penalties, fines and expulsion. Vermont,<sup>46</sup> New Jersey,<sup>47</sup> and even Massachusetts<sup>48</sup> hold such penalties unlawful coercion. But the Massachusetts decisions

<sup>45</sup> In *Guethler v. Altman et al.*, 26 Ind., 587, it was held that a storekeeper had no right of action against the officers of a school who from pure malice forbade the pupils to trade with him and so injured his business. But this case was decided in 1866 when the principle of unjustifiable interference with business had been nowhere stated in the United States, and cannot logically stand with the case commented on in the text.

<sup>46</sup> *Boutwell v. Marr et al.*, 71 Vermont, 1.

<sup>47</sup> *Booth etc. v. Burgess*, 72 N. J. E., 181.

<sup>48</sup> *Martell v. White*, 185 Mass., 255; *Willicutt & Sons Co. v. Union*, 200 Mass., 110.

met with vigorous dissent and it is submitted that the illegality of such penalties must depend entirely upon their use for an illegal purpose, i.e., the purpose of injuring another's business without just cause.

The Texas courts have reached right conclusions in cases of injury to business, but conclusions which are rested upon the same erroneous foundations that we have analyzed in the preceding paragraphs and which are logically supportable only upon the principle under consideration.<sup>49</sup> This principle has been neither affirmed nor disaffirmed in Pennsylvania, but there is nothing in any of the decisions there at variance with it, and the view its courts take of business as property and the right to enjoy it without molestation are indications that the doctrine would find a favorable reception.<sup>50</sup>

In Indiana,<sup>50a</sup> California, Rhode Island, Kentucky and Tennessee decisions have been rendered which are, confessedly, irreconcilable with it. In the Tennessee case,<sup>51</sup> however, there is a dissenting opinion based upon the doctrine of unjustifiable interference. The Kentucky cases<sup>52</sup> were decided in 1891 when the principle was little understood in most of the States and had a limited recognition, and are squarely in conflict with the great weight of opinion upon the points on which they are made to turn. The Rhode Island case<sup>53</sup> was decided at about that same time and apparently puts that State in the position of legalizing the boycott. This is also true in California.<sup>54</sup>

In the State of New York the doctrine is unsettled, but it is believed that a careful analysis of the decisions shows a decided tendency to its adoption. In *National Protective Association*

<sup>49</sup> *Delz v. Winfree et al.* (supra); *Olive & Sternberg v. Van Patten*, 7 Texas Civ. App., 630; *Wills v. Central Ice & Cold Storage Co.*, 39 Texas Civ. App., 491.

<sup>50</sup> *Cote v. Murphy et al.*, 159 Pa. St., 420; *Purvis v. United Brotherhood*, 214 Pa. St., 348; *Erdman v. Mitchell*, 207 Pa. St., 79.

<sup>50a</sup> See note 44.

<sup>51</sup> *Payne v. R. R. Co.*, 13 Lea, 507.

<sup>52</sup> *Chambers v. Baldwin*, 91 Ky., 121 (1891); *Bourlier Bros. v. Macauley*, 91 Ky., 135 (1891).

<sup>53</sup> *Macauley Bros. v. Tierney*, 19 R. I., 255 (1895).

<sup>54</sup> *Parkinson Co. v. Building Trades Council*, 98 Pac. Rep., 1027.



against Cummings, 170 N. Y., 315 (1902), a threat to strike made by union men to procure the discharge of men belonging to a rival union was under consideration. Seven judges took part. Three held, first, that it was lawful to strike for any reason deemed just by the strikers (repudiating the principle under discussion in terms); second, that, if the object of a strike could be deemed to affect its legality, the object of the strike in that case was lawful, being to get the work away from the members of the rival union for the sake of procuring it for their own members. One judge concurred on the second ground, ignoring the first. Three dissented on the ground that the object was not such a direct benefit as to justify the injury but was malicious and oppressive interference with trade rivals. It thus appears that three judges stood against the principle, one took no position with reference to it, and three stood for it. Had all seven accepted it, the ultimate result of the case would have been the same. In *Curran v. Galen*, 152 N. Y., 33 (1897), it was held that for union men to procure the discharge of a non-union brewery worker because he would not join the union and prevent him from getting any employment in the city was actionable because it was done in pursuance of a plan to deprive him of his employment and means of livelihood as long as he persisted in his refusal. The design was accomplished by a mere notice to an association of all the employing brewers, which had agreed to employ no non-union men, that the plaintiff in the case was a non-union man. Here is a clear instance of an act in itself lawful but made unlawful because of the unjustified injury it inflicted, the deprivation of all means of earning a livelihood. The fact is clear that the lack of justification is an element of the decision and that it cannot be taken to mean that the law so abhors that particular form of injury as to make it actionable in all events. For suppose employers and employees in a dangerous line of business should agree that the former would employ no one who could not furnish a bond of indemnity for any injury his negligence might cause, and a workman who respects competent and careful should be unable to furnish such a bond and so be discharged. Is there any

question that in such a case the act of discharging him would be justified, however hard the consequences to him?

The New York cases seem to hold, though not expressly, that an injury to one's trade is not actionable unless one is utterly deprived of the means of earning a living in the locality.<sup>55</sup> But it is a strange doctrine that the protection which the law gives a man in his occupation only goes to the extent that it may not be utterly ruined. If its destruction is actionable certainly any injury to it should be equally so. The only difference should be the amount of damages recoverable.

The general principle will be found clearly stated in one New York case,<sup>56</sup> and adopted in effect in two more.<sup>57</sup> In only two is a conclusion reached irreconcilable with it.<sup>58</sup> In all the other cases to which the doctrine could be applied, it will be found that the decision would have been the same although expressions occur which taken by themselves are at variance with it.<sup>59</sup>

If the right to strike were absolute, as declared in *National Protective Association v. Cummings* (supra), then the right to terminate any business relations, where there is no binding contract, is equally absolute. It is lawful for men to strike against A because he employs non-union workmen. It is equally lawful for the same men to say to B, "We will not patronize you if you deal with A." But this is a boycott. In other words, the conclusion is irresistible, if we accept the premise, that a boycott is legal. The lawfulness of a boycott, where there is no element of

<sup>55</sup> *Curran v. Galen* (supra); *Connell v. Stalker*, 21 App. Div., 609; *Davis v. United Engineers*, 28 App. Div., 396; *Davenport v. Walker*, 57 App. Div., 221; *Jacobs v. Cohen*, 183 N. Y., 207.

<sup>56</sup> *Davis Machine Co. v. Robinson*, 41 Misc., 329.

<sup>57</sup> *Beattie v. Callanan*, 82 App. Div., 7; *Roseneau v. Empire Circuit Co.*, 137 App. Div., 429 (1909).

<sup>58</sup> *Auburn Plank Road Co. v. Douglas*, 9 N. Y., 444 (1854); and perhaps *Wunch v. Shankland*, 59 App. Div., 482.

<sup>59</sup> *Johnston Harvester Co. v. Meinhardt*, 60 How. Prac., 168; *Rogers v. Everts*, 17 N. Y. Supp., 264; *Dueber Watch Case Co. v. Howard Co. et al.*, 3 Misc., 582; *Sinsheimer v. United Garment Workers*, 77 Hun, 215; *Connell v. Stalker*, 21 App. Div., 609; *Coon v. Chrystie*, 24 Misc., 296; *Matthews v. Shankland*, 25 Misc., 604; *Davis v. United Engineers* (supra); *Peo. v. Radt*, 15 N. Y. Crim., 174; *Davenport v. Walker*, 57 App. Div., 221.



fraud or misrepresentation or coercion, has not been before the courts of New York. But it is hardly probable that they would declare even such a boycott legal. No other court which has considered the question has done so, with the possible exception of the courts of California and Rhode Island. But New York must legalize it if the Court of Appeals is not willing to modify a part of the language of the prevailing opinion in the case last cited.

In the effort to find a legal reason for condemning the obvious unfairness of a boycott, in cases where there was no physical intimidation, the courts have been driven to declare that the threat to withdraw patronage from anyone who deals with the object of the boycott amounts to unlawful coercion. There is an endless amount of such reasoning in the reports. It would, perhaps, be idle at this date to question the validity of this reasoning, but it has led to much confusion because it does not go to the root of the matter. In the last analysis it will be found that the illegality of the threat lies in the fact that it is a threat to injure an innocent third party, with whom there is no dispute and from whom no direct advantage is to be gained, i.e., to injure without just cause. Would it not be better to put the decisions squarely upon this ground, as was done in *Rocky Mountain Bell Telephone Co. v. Montana F. of L.*, 156 Fed. Rep., 809 (1907)?

The Federal courts have not hesitated to carry the general principle to its logical outcome and hold that a strike for no cause whatever except to injure the employer is unlawful and an injunction will issue to prevent persons from inciting it.<sup>60</sup> And it seems reasonable that a body of workmen who have, by the mere act of entering the service of their employer, acquired a certain power to injure him through striking, should not exercise this power without some just cause, though there should, it would seem, be a liberal view as to what constitutes just cause.

The third general principle is that, viewing the various acts of interference with trade or business simply as civil wrongs, calling for a remedy in damages or by injunction, the character of the acts is no way affected by the fact that they are done

<sup>60</sup> *Arthur v. Oakes*, 63 Fed. Rep., 310.

by one or by many in combination. What one may lawfully do any number may lawfully do. There is no such civil wrong as conspiracy. There is a crime of conspiracy. Persons who unite to do certain things commit a crime, when the doing of the same things by one would be no crime; for example, to unite to prevent another from exercising his lawful trade is a crime, but it is no crime for one to do so. The agreement of several is the essence of the crime, not the acts they do in pursuance of the agreement. And this is true although in most jurisdictions no prosecution may be instituted unless some overt act is done. Even then the prosecution is for the conspiring; the act is but evidence of the conspiring and its purpose. But in civil law an agreement is never actionable. But if there be an agreement to do an act unlawful in itself for a single person to do, and such an act is in fact done and inflicts damage, then the injured party may recover because of the unlawful act. The fact that it was done by several in a conspiracy enhances the enormity of the wrong and the amount of damages to which the plaintiff would be entitled. The conspiracy does not make illegal what would otherwise be legal but only aggravates the wrong.<sup>61</sup> Consequently the limitations upon competitive activity discussed herein apply equally to individuals and combinations, and are neither more nor less legal when done by many than by one.

Until very recently there would have been no cause for stating this principle at such length. It has been reiterated without dissent in numberless text-books and decisions. It was thought to be unquestionable until, in the effort to apply the doctrines of the law to the new conditions created by combinations both of labor and of capital, some courts and text-writers have thought it necessary to discover a new principle, that what is lawful for one may not always be lawful for many acting in concert. It is thought by the writer that no court has as yet declared any act illegal on the sole ground that it was done by a combination. This, in itself, is some evidence that no such principle exists. In all the decisions which the writer has been able to find in which the new principle has been suggested or declared, either

<sup>61</sup> Cooley on Torts, 3d ed., p. 210.



it was a dictum or there were entirely adequate grounds for the decision without invoking it. The majority of such decisions where the relief asked was granted were placed partly, and properly, upon the ground that the defendant had willfully injured the plaintiff in his trade or business without just cause. A consideration of one or two of the more important cases in which the doctrine criticized is found will show, it is thought, the correctness of the statement that the doctrine is a wholly unnecessary departure from well established law, and will also reveal what effect numbers may have in making a given act *actionable*.

In *Pickett v. Walsh*, 192 Mass., 572 (decided in 1906) there was a contest between the members of certain masons' and builders' unions and certain non-union pointers for the work of pointing a certain building. The union men were doing the masonry and bricklaying work under a contractor. The non-union men were doing the pointing under direct employment by the owner of the building. The same contractor was engaged in erecting another building where he employed other members of the same unions. The union men demanded of the owner of the first building that he discharge the non-union pointers and give their work to themselves. The owner refused. Thereupon the union men threatened a strike on both buildings, at the first demanding the discharge of the pointers; at the second demanding that the contractor refuse to complete his contract with the owner, i.e., that he assist them to force the owner to terms. In a suit for an injunction brought by the non-union pointers it was held that the strike at the first building was legal, but that at the second illegal. The former was justified by the competition between two sets of workmen for a certain piece of work, and occasioned by a trade dispute between the parties to the strike. The latter was wrongful because (1) it was in effect compelling the contractor to join in a boycott on the owner of the building; (2) it was an unjustifiable interference with the calling of the non-union pointers; (3) it was an unjustifiable interference with the right of the contractor to pursue his calling, because there was no trade dispute with him; (4) there are things which are lawful for an individual to do

which are not lawful for a combination to do. The first ground assigned is doubtless correct and is supported by many cases, but as, taken by itself, it leaves undefined what will amount to unlawful compulsion, it is not helpful in aiding us to declare any working principle. The second and third reasons assigned for the opinion proceed upon the doctrine already noted as correct. It thus appears that the fourth ground, the doctrine under examination, is unnecessary to support the conclusion of the court on the whole case. Indeed it may be that it should hardly be regarded as one of the grounds but only a dictum; but, however it is to be looked at, it is submitted, with all deference to the great authority of the Massachusetts courts, that the doctrine in the words stated is not and cannot be the law. The earlier language of Justice Holmes in the same court is worth recalling in this connection: "But there is a notion which latterly has been insisted on a good deal, that a combination of persons to do what any one of them might lawfully do by himself will make the otherwise lawful conduct unlawful. It would be rash to say that some as yet unformulated truth may not be hidden under this proposition. But in the general form in which it has been presented and accepted by many courts it is plainly untrue, both on authority and on principle." After this suggestion, that the number of persons engaged in combination in an act may alter its character, the reason given is the greater power of coercion on the part of a combination. But what does this amount to more than to say that an act done by many may inflict injury by reason of their greater power to harm when the said act done by one would not? In other words, the nature of the act is not changed but its power to do damage is increased. The wrong under consideration was the willful doing of an unjustified act tending to injure another in his business. The thing done is essentially unlawful. Done by many, it inflicts damage and becomes actionable. Done by one, it would rarely inflict any damage because it seldom happens, at least in a labor dispute, that one person possesses the power to damage by the act of withdrawing his services. It is *injuria sine damno*. If the one did cause damage, would not that damage be as actionable as



if done by many? The true form of the proposition is this: a thing not *actionable* when done by an individual may be *actionable* when done by a combination. A wrong done by one may result in no damage when the same wrong done by many may result in damage. It seems clear to the writer that this is what the court really had in mind, for it rests its reasoning on the greater power to harm of the combination. And this view amply sustains the power of the courts to deal with wrongs by combinations while it obviates the necessity for a departure from established principles. Such departures are always to be deplored because they plunge the law into uncertainty. What sorts of things become unlawful, because done by many, and how many must concur to cause this result, are questions over which the courts would divide for years, and no man living would see the evolution of any universally accepted and definite limitation of the doctrine.

In *State v. Huegin*, 110 Wis., 189, the facts were that there were four newspapers in one city charging the same rates for advertising. One raised its rate. Thereupon the other three refused to accept advertisements from anyone who advertised in the first at the advanced rate, unless they paid the three papers the same advanced rate; but they accepted advertisements at the old rate from any who would refuse to advertise in the one at the higher rate. This conduct was held to give a right of action as inflicting unjustifiable injury upon the one paper, and the court declared the true doctrine that "an act done by many may be actionable though the same act by one would not." It seems obvious that if there had been but two papers and one of them had done what the three did and, as is conceivable, its power had been so great as to cause the same damage that the three caused, it would have been equally liable.<sup>62</sup>

In the application of the foregoing principles to the subject in hand, interference with the contract and contract rights of a competitor, it should be observed that contracts viewed from standpoint of the nature of the obligation which they impose two sorts. Of the first sort are those contracts which upon one or both parties an absolute and binding obliga-

ri, 126 Wis., 147, depends upon a special statute.

tion to give service or employment for some definite time, to do some act certain or to deliver certain property. Those may be called contracts of perfect obligation. Of the second sort are those contracts which are terminable at the will of either party, or under which one party agrees to do a certain thing in the event only that the other party shall do a certain other thing, the other party not being bound to do the other thing unless he shall so desire. Those may be called contracts of imperfect obligation. It follows that interference with contract rights may take any one of three forms, (1) inducing a party to a contract of perfect obligation to break it, (2) inducing a party to a contract of imperfect obligation to break it, (3) inducing one not to make contracts with another, i. e., not to deal with him.

With regard to the first form of interference, inducing the breach of a contract of perfect obligation, it would seem a reasonable rule that one who procures such a breach by any means whatever, whether in themselves lawful or not, should be liable to the injured party. A party to such a contract has an absolute right, enforceable at law, to have the contract kept by the other party. It would certainly appear that an injury to this legal right by anyone, by any means, ought to be remediable at law. It has been so held in two States, Texas,<sup>63</sup> and Iowa.<sup>64</sup> In only three States has this doctrine been denied. In Kentucky the right of action is confined to cases where the contract broken is one for menial service, and it does not affirmatively appear that inducing the breach even of such a contract would be actionable if the means used were lawful in themselves.<sup>65</sup> New York has twice denied the doctrine, holding that the means used must be illegal *per se*.<sup>66</sup> Maine holds the

<sup>63</sup> *Raymond v. Yarrington*, 73 S. W. Rep., 800.

<sup>64</sup> *Hollenbeck v. Ristine*, 114 Iowa, 359. The ruling is, however, much broader than the facts require.

<sup>65</sup> *Chambers v. Baldwin* (supra); *Bourlier Bros. v. Macauley* (supra).

<sup>66</sup> *Ashley v. Dixon*, 48 N. Y., 430; *Roseneau v. Empire Circuit Co.* (supra). It is intimated in the former case that had the breach been induced by a "conspiracy" it would have been actionable; and it is implied in the latter, where the breach was induced by a conspiracy, but was, nevertheless, held not actionable, that, had it been induced for the sole purpose of injuring plaintiff's business, he might recover. From this the concurrence of these elements would appear to make such interference actionable even in that State.



same, but in both the cases reported in that State the contract in question is in fact a terminable one and the ruling is much broader than the facts necessitate and is, perhaps, to be limited by them.<sup>67</sup> In all the other States, it is thought, the question is still an open one, none of them having pronounced for or against the principle that procuring the breach of a binding contract is actionable under all circumstances. In the following States it is held actionable if the procurement be by a conspiracy: Pennsylvania,<sup>68</sup> Massachusetts<sup>69</sup> and Wisconsin.<sup>70</sup> In the following States, if the procurement be with intent to injure and without just cause:<sup>71</sup> Georgia,<sup>72</sup> Illinois,<sup>73</sup> Maryland,<sup>74</sup> the Federal Courts,<sup>75</sup> Florida,<sup>76</sup> Massachusetts,<sup>77</sup> New Jersey,<sup>78</sup> North Carolina,<sup>79</sup> Minnesota,<sup>80</sup> West Virginia,<sup>81</sup> Washington,<sup>82</sup> and Colorado.<sup>83</sup> In any jurisdiction there can be no doubt that any interference by fraud or by other means unlawful in themselves with any actual or prospective contract relations gives a

<sup>67</sup> Heywood v. Tillson, 75 Me., 225; Perkins v. Pendleton, 90 Me., 166.

<sup>68</sup> Flaccus v. Smith, 199 Pa. St., 128. (Conspiracy to injure business.)

<sup>69</sup> Garst v. Charles, 187 Mass., 144.

<sup>70</sup> Martins v. Reilly, 109 Wis., 464.

<sup>71</sup> In some of the cases cited in support of this statement the action was for inducing the breach of a terminable contract or the prevention of contract relations, but, if there is a remedy in such cases, then, *a fortiori*, the inducement of a breach of a contract of binding obligation is actionable.

<sup>72</sup> Employing Printers Club v. Doctor Blosser Co. (supra).

<sup>73</sup> London Co. v. Horn (supra); Doremus v. Hennessy (supra).

<sup>74</sup> Gore v. Condon, 40 L. R. A., 382.

<sup>75</sup> Thomas v. C. N. O. & T. P. Ry. Co. (supra); Angle v. Ry., 151 U. S., 1; Sperry etc. v. Weber & Co., 161 Fed. Rep., 219; Bitterman v. Ry. Co., 207 U. S., 205.

<sup>76</sup> Chipley v. Atkinson (supra).

<sup>77</sup> Berry v. Donovan (supra); Beekman v. Marsters, 195 Mass., 205.

<sup>78</sup> Van Horn v. Van Horn (supra); Jersey City Printing Co. v. Cassidy, 63 N. J. E., 759.

<sup>79</sup> Jones v. Stanley, 76 N. C., 355; Holder v. Manufacturing Co. (supra).

<sup>80</sup> Ertz v. Produce Exchange (supra); Gray v. Building Trades Council (supra).

<sup>81</sup> Transportation Co. v. Oil Co. (supra).

<sup>82</sup> Jensen v. Union, 81 Pac. Rep., 1069.

<sup>83</sup> Master Builders Ass'n v. Damascio, 16 Colo. App., 25. In this case a right of action for preventing the reception of a certain bid was denied on the ground that there was nothing to show an intent to injure plaintiff's business.

cause of action. The three cases cited in the note illustrate the doctrine of interference by fraud as applied to breaches of contracts of perfect and imperfect obligation and to the prevention of prospective contracts.<sup>84</sup> And the foregoing doctrines apply equally to cases where the inducement is to break a contract unenforceable by reason of some formal defect such as failure to put the contract in writing when required by the Statute of Frauds.<sup>85</sup>

With regard to the second form of interference, inducing the breach of a terminable contract, there does not seem to be the same ground for holding every inducement actionable. There being no legal right in either of the parties to an enforcement of the contract, should the other wish to terminate it, neither suffers any legal injury by such termination, and there should be no right of action unless there is in the inducement some distinct element of illegality. We have already noted that, if the means are *per se* illegal, there is a remedy.<sup>86</sup> The question arises whether the procurement of a breach of a terminable contract by means not *per se* illegal is actionable. It has been so held under the following circumstances: where the discharge of a workman has been procured by means of a threat to strike or a request for his discharge, because he would not join the union;<sup>87</sup> where the discharge of a servant has been procured by the withholding of a gratuity offered to the employer only upon condition of the discharge, no cause for the procurement appearing;<sup>88</sup> where the discharge was procured by mere persuasion, from pure vindictiveness or to force the payment of an alleged debt;<sup>89</sup> where the discharge of a workman was procured by a threat to strike because he refused to obey an unauthorized requirement of the union;<sup>90</sup> where members of a

<sup>84</sup> *Rice v. Manley*, 66 N. Y., 82; *Benton v. Pratt*, 2 Wend. (N. Y.), 285; *Standard Oil Co. v. Doyle*, 82 S. W. Rep., 271 (Ky.).

<sup>85</sup> *Rice v. Manley* (supra); and see *Martins v. Reilly* (supra).

<sup>86</sup> See note 78 and also *Buffalo Oil Co. v. Standard Oil Co.*, 12 N. E. Rep., 825 (interference by threats of baseless and malicious suits); and *Cooper v. Scyoc*, 104 Mo. App., 414 (same); *Doremus v. Hennessy* (supra).

<sup>87</sup> *Curran v. Galen* (supra); *Berry v. Donovan* (supra).

<sup>88</sup> *Chipley v. Atkinson* (supra).

<sup>89</sup> *Holder v. Manufacturing Co.* (supra); *Hollenbeck v. Ristine* (supra).

<sup>90</sup> *Connell v. Stalker* (supra).



master printers association persuaded the employees of another printer to leave his employ, because he would not join the association;<sup>91</sup> where workmen were induced to quit the service of their employer because he would not pay a fine to the union.<sup>92</sup> All these cases have been discussed in connection with the consideration of the principle of intentional, unjustified injury to trade or business. Though decided upon varying grounds, e.g., that the breach was induced by a conspiracy, or by unlawful coercion, or was an enticement of servants from their employment,<sup>93</sup> it will appear that the one common element of these and all similar cases where the inducement was held actionable is the intentional and unjustified injury. It will be found equally true, it is thought, that in all such cases where the right of recovery was denied there was an absence either of the element of lack of justification or of the element of intentional injury to trade or business.<sup>94</sup>

With regard to the third form of interference, the prevention of contracts, in all cases where such prevention has been held actionable, and the means employed were in themselves legal, the same element of wrong furnished the ground of action.<sup>95</sup>

We have discussed interference with terminable and prospective contracts as invasions of contract rights because they are frequently, perhaps usually, so treated in the reports, and have distinguished the two as if there were something different

<sup>91</sup> *Employing Printers Club v. Doctor Blosser Co.* (supra).

<sup>92</sup> *Carew v. Rutherford* (supra).

<sup>93</sup> This was formerly held ground for a special action on the case, but any distinction between inducing a breach of this and any other sort of terminable contract is rapidly disappearing.

<sup>94</sup> *Boysen v. Thorn*, 98 Calif., 978, action for persuading a hotel proprietor to turn out a guest; *Heywood v. Tillson* (supra); *Raycroft v. Tayntor*, 68 Vermont, 219. But *Wunch v. Shankland* (N. Y. supra) and *Perkins v. Pendleton* (Me. supra) cannot be reconciled with this doctrine.

<sup>95</sup> This is illustrated by most of the strike cases cited in the preceding notes, where the relief sought was usually not merely against the procuring of employees to quit but against the inducing of others, not employees, to enter into the master's employment. But in Tennessee, to induce one not to trade with another is not actionable, if the means are legal, even though done without just cause and with intent to injure. *Payne v. R. R. Co.*, 13 Lea (Tenn.), 507.

in the nature of the rights in the two cases. But in point of fact one has no greater rights with respect to the future trade or service of another if a terminable contract exists between them than if there were no such contract. And a clearer concept of all these cases can be had if one keeps in mind that the fundamental question in all is whether there has been an intentional unjustified injury to another's trade or business and that the fact that the injury was inflicted through an interference with his contractual relations is incidental.

To summarize and reduce the foregoing to a form where it may be of some practical avail to one engaged in a competitive struggle, it may be said: (1) That it is not safe to induce one who is under a binding contract with one's competitor, not terminable at will, to break the same, even by mere persuasion, except in the States of Maine, New York and possibly Kentucky; that it is by no means certain that it is safe in Maine, nor in New York if the breach be induced by a conspiracy to injure trade or business, and in Kentucky it is probably not safe if the contract is for menial service. (2) That, except in the three States last named and the States of Tennessee and California, to induce the breach of a terminable contract or prevent the making of a contract, i.e., prevent dealings with the competitor, with the intent to injure his business, is not safe, unless for the sake of some direct advantage to oneself not accruing merely by and through the injury inflicted upon the competitor but independent of it; and it is not certain that even in Tennessee it would be safe so to induce the breach of a terminable contract. (3) That for a trade association to enforce among its members non-intercourse with a non-member by penalties is illegal, though voluntary non-intercourse were not.

In the opinion of the writer, the value of a study of the main principle involved in this discussion goes far beyond its usefulness as a guide in determining the legality of any particular form of business rivalry. Of all the States that recognize the doctrine of the illegality of an intentional injury to business done without just cause, Massachusetts, as she was the first to adopt it, is also the one that seems best to grasp and appreciate it as an



independent principle of law. When it has received equal recognition throughout the country, will it not accomplish much in the way of curbing the oppressive acts of great combinations that is now sought to be accomplished by anti-trust legislation, and is it not even conceivable that it may render unnecessary a great part of that legislation, which is hindered with the difficulties that always attend efforts to curb by statutes inevitable economic tendencies? What latter-day development of the common law is fraught with greater possibilities or likely to have larger economic and political significance?

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## SOME IMMIGRATION DIFFERENCES.

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### CONTENTS.

Prominence of the immigration question, p. 79; six classes of differences, p. 81; the original population of the United States, p. 81; racial stock of immigrants up to 1882, p. 82; racial stock of the new immigrants, p. 84; volume compared with total population, p. 85; volume compared with land, p. 86; distribution of immigrants between city and country, p. 89; change in the economic character of the United States, p. 91; change in the native birth rate, p. 93; change in the quality of the immigrants, p. 94; conclusion, p. 97.

IN the year 1656 there arrived at what was then the Dutch colony of New Netherland a ship from Sweden, the "Mercurius," bearing one hundred and thirty prospective settlers, Swedes, who craved permission to land. Upon due deliberation, the colonial authorities decided that the welfare of the colony would be endangered by such an addition, and they were refused permission to disembark. As it was represented, however, that they were entirely out of provisions after their long voyage, permission was granted the ship to come to New Amsterdam and stock up for the return voyage, on condition that nobody should come on shore. Thus early did the immigration question develop on American soil.

Two years later, in a letter to Peter Stuyvesant, the directors of this same colony express their disapproval of the action of Director Olricks in allowing entrance to certain English families, "as we cannot expect anything good from this nation." To forestall settlement by the English, Director Stuyvesant and the Council, on September 4, 1659, recommended to the Directors in Holland that they send over twenty-five or thirty families of "good and clever farmers." The nationalities preferred were Polish, Lithuanian, Prussian, Jutlandish or Flemish—a comparison which is something of an inversion of modern ideas.

The English were not far behind the Dutch in their exclusive tendencies. We find the General Assembly of Rhode Island in 1652 ordering that no foreigner, Dutch, French, or of any other nation, should be received as a free inhabitant of any of



the towns of the colony, except by general consent of the colony. In his Report on the State of the Province, about 1687, Governor Dongan of New York bewails the small number of English, Irish and Scotch families which had come over in the last seven years, compared with the large immigration of French.

The problem of the immigrant was a very live one in colonial days. During this period there was a sharp distinction between the colonist and the immigrant. The colonist was a settler from the country which had founded the colony and to which it owed allegiance. Immigrants, or "foreigners," were all others; colonists were welcome, but immigrants were regarded with undisguised suspicion. With the establishment of the United States as a separate nation, this distinction disappeared, and with it the early antipathy to foreigners becomes less pronounced. All new-comers are now immigrants, and as a rule, in the early years of our national existence they were cordially received.

The immigration question, nevertheless, has remained a prominent one from the dawn of our national life to the present. It has always made a strong appeal to the people of the United States, and has been the cause of ever-recurring arguments and discussions, more or less passionate and heated in accordance with the conditions of the period and the varying size of the immigration wave. An era of large immigration has always aroused a volume of protest of corresponding dimensions. As the current of aliens has dwindled, from one cause or another, the natives have forgotten their fears and have devoted their attention to other questions, till a recurring deluge of foreigners has again brought the matter of immigration to the fore. At the present time we are in a period of comparative quiescence, as far as anti-immigration agitation is concerned. Since the record year of 1907, when 1,285,349 immigrant aliens set foot upon our shores, there has been a sharp falling-off in the current, due to the economic conditions in this country, and the matter has accordingly been temporarily dismissed from American public thought. When, however, the incoming stream again passes the record mark (which appears to be the accepted signal for renewed concern), as it unquestionably will, the hue and cry

will be raised once more, and the horizon will be befogged by the dust and smoke of the conflict.

The present lull in affairs may be a fitting season to look calmly at some of the more prominent aspects of the matter, and to try to define their bearing on our national life. The arguments against immigration have taken very much the same general form generation after generation; the dilution and degradation of the racial stock, the lowering of the standard of living, the depression of wages, the increase of dependents and criminals, the destruction of social and political ideals. In the *North American Review* for April, 1835, may be found an article by Mr. A. H. Everett, which contains the germ, at least, of most of the fundamental arguments against immigration. The modern investigator of the problem finds that most of his choicest thoughts have been expressed by others years ago. The purpose of the present paper is to investigate the conditions surrounding immigration into the United States at the present time, conditions appertaining to the country, and those concerning the immigrants, with a view to discovering whether there are any fundamental differences between these conditions and those which prevailed when immigration first began to assume large proportions. If these differences exist, do they throw a new light on the stock arguments, or give them a different relative weight?

The aspects of the problem under which we shall look for differences may be briefly stated at the outset as follows: (1) the racial stock of the immigrants; (2) the volume of the immigration current; (3) the distribution of the immigrants in the United States; (4) the economic conditions of the country; (5) the native birth-rate; (6) the quality of the immigrants.

First and foremost, the racial stock of the immigrants presents itself. That there is a difference in this respect, and what the general nature of the difference is, is a matter of common knowledge. Yet the completeness of our argument, and the definiteness of our ideas, require that this point be given brief consideration.

In regard to the early peopling of the North American colonies, three fundamental facts stand out prominently. First,



the actual migration from trans-Atlantic countries was very slight. Franklin estimated in 1741 that the population at that time, amounting to about one million, had been produced out of an original migration of less than 80,000. Mr. Prescott F. Hall is authority for the statement that at the time of the Revolutionary War, "the population of New England was produced out of an immigration of about 20,000 persons who arrived before 1640, and it overflowed into the other colonies without receiving any corresponding additions from them." Contrast with this the fact that to the 76,303,387 population of the United States in 1900 there had been a contribution of 19,115,221 immigrants in the preceding eighty years. This is a ratio of almost exactly one to four, as against a ratio of less than one to twelve in 1741 for a much longer period preceding. This, however, is a matter of volume, and its consideration belongs in a later paragraph.

The second fundamental fact is that such immigration as there was, though containing a number of diverse elements, was preponderantly English, and the English element was sufficiently in the majority to impress its type quickly upon the others.

The writer of the article on the United States in the *Encyclopedia Britannica* says: "No matter how diverse the small migration might have been on its arrival, there was a steady pressure on its descendants to turn them into Englishmen; and it was very successful." This transforming process was furthered by the third fundamental fact, viz., the non-English elements were almost wholly from races allied to the English. The most important of these were the Dutch, Swedes, Germans, and Scotch-Irish, which, with the English, constituted practically the entire migration. And all these races, as Professor Commons has pointed out, were less than two thousand years ago one Germanic race in the forests surrounding the North Sea. The same author says, "It is the distinctive fact regarding colonial migration that it was Teutonic in blood and Protestant in religion."

There can be no doubt that, at the beginning of our life as a nation, the people of the United States were thoroughly homogeneous in race, and in all that goes with it. Quoting again from the *Encyclopedia Britannica*, "The whole coast from Nova Scotia to the Spanish possessions in Florida was one in all essen-

tial circumstances." The American type had already taken definite form, and it rested firmly on an Anglo-Saxon foundation.

Such was the beginning of the people of the United States. Let us consider briefly what was the course of events during the succeeding century and a quarter. We have no statistical knowledge of the extent or character of immigration into this country until the year 1820, as it was only at that time that the government began to keep a record of incoming aliens. But of one thing we are fairly certain, viz., that from the close of the Revolution up to this time the annual immigration was insignificant. Various estimates have been made of the number of immigrants entering this country. They differ somewhat, but it is safe to say that an annual average of 10,000 would amply cover the movement down to 1820. They came almost entirely from the United Kingdom and Germany. For the next twenty-five years immigration increased gradually, until in 1845 the great potato famine occurred in Ireland, and sufferers from that stricken land began to swarm upon our shores by tens of thousands. At the same time the immigration from Germany expanded rapidly, until in 1854, when the first record was established, the total immigration amounted to 427,833, of whom 215,009 or 50.2 per cent., were from Germany. The stream from Great Britain (almost wholly Irish) had been dwindling for three years, but still amounted in this year to 160,253, or 37.5 per cent. of the total. Putting these two figures together, it appears that 87.7 per cent. of the entire immigration for that year came from these two sources. After 1854, the immigration fell off sharply, and the record of that year was not exceeded until 1873, when a total of 459,803 was reached. A third record was established in 1882, when the total reached 788,992. During all this period the immigrants from Germany and the United Kingdom still constituted the bulk of the stream, amounting together to 54.5 per cent. of the total in 1882. Of the remainder, 105,326, or 13.4 per cent., were from the closely allied Scandinavian races. This stream had begun to assume importance about fifteen years previously and had reached its climax in the year in question, though it remained a consider-



able element for some time afterwards. A large share of the remaining immigrants of this year were from Canada.

It is thus apparent that up to the year 1882, almost the entire contribution to the American stock from foreign sources was from races very closely related to the population which formed the original basis of the American people. As far as any real dilution of the American stock is concerned, it had practically not begun at the time in question. Beginning with this period, however, a very different state of affairs presents itself. From this time on, the immigration from Germany fell off rapidly. That from the United Kingdom remained fairly constant for several years, and then it too dwindled. The two combined never again reached the same figure, and in the record year of 1907 they amounted to only 11.8 per cent. of the total. At the same time, the total immigration increased by leaps and bounds. What were the sources of the new currents? They were mainly three, all becoming noticeable very close to the year 1882. The most important of these is Austria-Hungary. Beginning with the year in question, the current from this country has steadily swelled in volume until in the year 1907 it reached a total of 338,452, or 26.3 per cent. of the total immigration for the year. Closely following her come Italy and Russia, with totals in the year 1907 of 285,731, and 258,943—or 22.2 per cent. and 21.1 per cent. respectively. This is the "new immigration" of which we have so often heard, and these three currents together amounted in 1907 to 68.6 per cent. of the total. In addition, there were considerable contingents from Greece, Roumania, Turkey, Portugal, and other South European countries.

The fact that almost all of the immigrants from Russia are Jews makes this distinction still more pronounced. Before 1890 a comparatively small number of Jews from Germany, Austria, etc., had entered the country, but they were but as a drop in the bucket to the great hordes of this race who have since come from Russia. And whatever may be said of the good or bad points of this people, it can not be denied that they form a decidedly distinct factor in our population, differing from the original American stock in race, religion, customs and habits of thought.

Now the people of these countries are of a widely different racial stock from those of the earlier immigration, with other habits, ideas, and abilities. They constitute a truly new element in the American people. Whether or not this new blood shall be considered desirable to the life of our nation, is not the purpose of this paper to discuss. The fact which needs to be emphasized here is that the true dilution of the American physical stock is a matter of very recent years. Not until the year 1896 did the immigration from the three new sources exceed that from the two old ones with Scandinavia added. We have less than half a generation to judge of the effects of the new movement. And it must always be borne in mind that one of the first lessons taught by anthropology is the persistency of racial characters, even under a deep veneer of acquired customs. Tribes which have long abandoned cannibalism as a matter of daily custom will revert to the practice in times of great excitement or calamity. Keane records a case of practical witchcraft under the guise of Christianity which occurred in Russia in the year 1907. True assimilation requires we know not how many generations.

As regards volume, the main facts will be already in the mind of the reader. Graphically represented, the immigration current into the United States presents a series of waves, rising now and again to extreme crests, then subsiding, only to rise again, ever higher and higher than before. It is these successive crests which have aroused the consternation of the American people from time to time, and it is significant that the year 1882, which established a high-water mark not again reached until 1903, marks the passage of the first inclusive immigration law, and the beginning of the present system of handling immigrants by the federal government.

As a sedative to the fears thus aroused, it has been pointed out that, while the positive immigration has increased tremendously, it has not increased at so great a rate as the population of the country. The ratio between immigration and total population was higher in the early fifties and early eighties than at any subsequent period. This reasoning is logical, applied to only one phase of the situation—the racial admixture. And as we have



seen, any comfort that may be derived from this fact is much more than offset by the difference between the old and new immigration. And even in this respect the truth can be arrived at only by taking into consideration the number of foreign-born already in the country at the different periods.

The following table gives the number of foreign-born to 100,000 native-born in the population of the country at the time of the different censuses since 1850:

1850.....	10,715	1880.....	15,365
1860.....	15,157	1890.....	17,314
1870.....	16,875	1900.....	15,886

It thus appears that while the ratio between immigration and total population has been less in recent years than at some previous periods, the proportion of foreign-born in the population is much greater than at the beginning of the immigration movement, and the assimilating power of the nation is correspondingly lessened. In this respect, as in many others, we may await with interest the data which the coming census will furnish after this decade of tremendous immigration.

For all other purposes than determining racial mixture, the comparison between immigration and total population is inadequate and misleading. It is as if a fireman whose steam boiler lacked a safety valve was warned that his gauge was going up more and more rapidly all the time, and he replied, "Never mind, the pressure is not coming in so fast, compared to what I already have, as it was a while ago." The real question is, How does the volume of immigration compare with the means of utilizing it which still remain?

The primary and fundamental means of utilizing immigration is land. The population question turns, in its ultimate analysis, upon the proportion between men and land. A new country, with wide stretches of territory, much of it undeveloped, needs settlers above all things. As the land is taken up and put under a fair degree of cultivation, the whole question of population changes its aspect.

Taking the case of the United States, the first and simplest comparison to make is that between immigration and the total of the nation. In this, as in the subsequent compar-

isons, it will be desirable to leave Alaska out of consideration. The enormous extent of that inhospitable region, to which practically none of our immigrants ever find their way, if included in the reckoning, would simply confuse the issue. The gross area of the United States, exclusive of Alaska and Hawaii, at the time of the different censuses, has been as follows: 1790 and 1800, 827,844 square miles; 1810, 1,999,775 square miles; 1820, 2,059,043 square miles; 1830 and 1840, the same; 1850, 2,980,959 square miles; 1860 down to the present, 3,025,600.

Using our estimate of 10,000 per year previous to 1820, and the official figures after that date, we find that the immigration by decades from 1791 to 1909 was as follows:

1791-1800.....	100,000	1851-1860.....	2,511,060
1801-1810.....	100,000	1861-1870.....	2,377,279
1811-1820.....	98,385	1871-1880.....	2,812,191
1821-1830.....	143,439	1881-1890.....	5,246,613
1831-1840.....	599,125	1891-1900.....	3,687,564
1841-1850.....	1,713,251	1901-1909 (9-year period) ...	7,753,816

Combining these two sets of figures, it appears that for each immigrant coming to this country during the decades specified, there was at the close of the decade the following number of square miles of territory in the United States:

1800.....	8.278	1860.....	1.205
1810.....	19.998	1870.....	1.273
1820.....	20.927	1880.....	1.076
1830.....	14.355	1890.....	.577
1840.....	3.437	1900.....	.820
1850.....	1.739	1909 (9-year period) .....	.390

This table illustrates forcibly the fact that from the point of view of the need of new settlers, immigration at the present time is a vastly different matter from what it has ever been before in the history of our country. This impression is strengthened if we make another comparison, which is even more significant for our purposes, viz., the relation of immigration to the public domain, that is, to the land which still remains unclaimed and open to settlement. If there were still large tracts of good land lying unutilized, and available for settlement, as there have been in other periods of our history, we could take comfort in the thought that as soon as the incoming aliens caused too great a congestion in any region, the surplus inhab-



itants would overflow, by a natural process, into the less thickly settled districts. Let us consider what the facts have to show in this respect.

In 1860 there were, as nearly as can be estimated, 939,173,057 acres of land lying unappropriated and unreserved in the public domain. In 1906 there were 424,202,732 acres of such land, representing the leavings, after all the best land had been chosen. In other words, for each immigrant entering the country during the decade ending 1860 there were 374.0 acres in the public domain, at least half of it extremely valuable farm land. In 1906, for each immigrant entering during the previous ten years there were 68.9 acres, almost wholly arid and worthless.

The fact that the immigrants to this country do not, to any great extent, take up this unclaimed public land does not destroy the significance of this comparison. As long as there was a strong movement of the native population westward, it was not so much a matter of concern, if large numbers of foreigners were entering the Atlantic seaboard. And this was exactly the case during the middle of the nineteenth century. This was the period of the great internal migration to the new lands of the Middle West. It is scarcely necessary to say that nothing comparable to this is going on at the present time. The frontier, which has had such a determining influence on our national life, is a thing of the past. Of the 424,202,732 acres remaining unappropriated and unreserved in 1906 only a very small part consisted of valuable farm lands, such as existed in great abundance when the Homestead Act was passed in 1862. Evidence of this fact is furnished by the act recently passed allowing homesteads of 640 acres to be taken up in certain sections of Nebraska where it is impossible for a man to make a living from less. There is already a marked movement of ambitious young farmers from the United States to the new and cheaper wheat lands in Canada. The incoming hordes of aliens are not now counterbalanced by any important internal migration.

The population per square mile of the United States has increased from 3.7 in 1810 (the lowest in our history) to 10.8 in 1860, 17.3 in 1880 and 25.6 in 1900. Taking the country as a whole this does not represent at all a dense population. But

it does not fairly represent the country as a whole. It is one of those frequent cases where an average is misleading. In the eastern States of the Union the conditions are very different. And it is in just these States that the great bulk of our present immigrants settle. In 1907, according to the Immigration Report, 6.5 per cent. of our immigrants were on their way to Massachusetts, which in 1900 had a density of 348.9; 30.0 per cent. to New York with a density of 152.6; 17.9 per cent. to Pennsylvania with a density of 140.1; 8.1 per cent. to Illinois with a density of 86.1; 5.5 per cent. to New Jersey with a density of 250.3; while little Rhode Island, with a density of 407.0, was credited with .9 per cent.

It thus appears that these six States, containing only 5.6 per cent. of the total area of the United States, and with a density in each case far above the average, received 68.9 per cent. of the total immigration for the year.

This brings us to the matter of distribution, in which again we find a marked difference between the old and the new immigration. This is a consideration of vital importance to the interests of the country, for upon the distribution of our immigrants depends very largely the answer to the question whether they benefit the nation or not. The popular idea on this subject is that the newer immigrants are much more inclined than their predecessors to congregate in certain localities, particularly in the large cities. Careful investigation shows this idea to be well grounded in fact.<sup>1</sup> The great problem of distribution, as every thoughtful writer on the subject recognizes, is to break up the closely packed homogeneous colonies of foreigners in the great cities and to get the immigrants away from the centers of population to the country districts, to the unoccupied land, where they can render a real contribution to the life of the country.

This problem is magnified many fold by the conditions of modern immigration. It is true that the Irish display no particular agricultural proclivities. But their independence, their familiarity with the English language and English customs, their

<sup>1</sup> For a fuller discussion of this topic, see Walter F. Wilcox, "The Distribution of Immigrants in the United States," *Quarterly Journal of Economics*, August, 1906, and reply by H. P. Fairchild, *YALE REVIEW*, November, 1907.



adaptability, have combined to scatter them generally all over the United States, and to absorb them into our national body politic. The achievement of this desirable result has been hastened by the fact that a large proportion of the Irish immigrants were young girls who entered domestic service in this country,—which is as good a means as we can imagine of Americanizing the raw immigrant. As for the other elements in the early immigration from Great Britain, the English and the Scotch, their close relationship to the American people, and their natural inclinations, practically eliminated them from the problem of assimilation.

Turning to the second great stream of the old immigration, the Germans, we find them a decidedly agricultural people. They drifted very naturally to the fertile farm lands of the Middle West and the Northwest, where they became substantial citizens and contributed largely to the upbuilding of those great sections. Edward Everett Hale, writing in 1852, assumed it to be a recognized fact that the bulk of the immigrants at that time should drift into agricultural life or into personal service. The Scandinavians, who came a few years later, exhibit the same traits, even to a greater degree. Broadly speaking, then, the older immigrants found their way to the land where their services were needed, and where they contributed to the development of what was then a new country.

How different do we find the modern conditions! We have already seen how large a proportion of the immigrants in recent years go to our most densely populated States. A glance at the census figures for 1900 shows how stupendous a result had already been produced at that time by this tendency, and reveals the startling and significant fact that in Pennsylvania one-sixth of the population is foreign-born, in Illinois one-fifth, in New Jersey almost one-fourth and in New York over one-fourth, while in Massachusetts and Rhode Island almost one-third of the total population is foreign-born.

When we turn to the distribution in cities, we find the showing still more suggestive. In the year 1900, 66.3 per cent. of the foreign-born population were dwelling in cities of at least 2,500 population, and 38.8 per cent. in cities of over 100,000 population. In 1890 the figures were 61.4 per cent. in cities of at

least 2,500, and 33.4 per cent. in cities of over 100,000, showing how great a change even the short period of a decade may work. A comparison of races in this respect shows how great a difference exists between the older and newer immigrants. In 1900 52.6 per cent. of the immigrants from the United Kingdom were living in cities which had a population of at least 25,000 in 1890, 27.8 per cent. of those from Scandinavia, and 48.7 per cent. of those from Germany; this is the old immigration. Of the new immigration, 61.2 per cent. of the Italian immigrants and 72.4 per cent. of those from Russia were in cities of the specified size.

Along with this increased tendency toward the city on the part of the new immigrants, we find a more pronounced tendency to herd together in close, compact settlements, either in or out of the large cities. Nowhere do we find German, Irish, or Scandinavian colonies corresponding to the "Ghetto" or the Italian districts of New York, or the Greek colonies of Lowell and Chicago, or the various alien groups in the mill towns of New England. This is one of the most serious features of the modern situation. Our recently immigrating aliens are not thrown into close social and business relations with native Americans, but mingle almost exclusively with those of their own race, and live in conditions as nearly as possible a replica of those from which they come, so that in countless cases they are absolutely ignorant even of the English language, in spite of a residence in this country of five, ten or more years. The chances of true assimilation are profoundly affected by such changes as these.

The fact that this proclivity of the foreign-born for urban life is synchronous with a general rush of all the elements of our population toward the city does not make its significance any the less profound. It indicates a fundamental change in the industrial organization of the United States, which has an important bearing on the desirability of additions to our population, and brings up the fourth set of changes, those connected with our economic life.

The great change in this respect has already been suggested in a previous paragraph, and may be briefly stated as follows:



in the ninety years covered by the immigration statistics, the United States has changed from an agricultural to a manufacturing and commercial nation. In the early nineteenth century the rural family was the typical one, to-day it is the urban family. Then the simplicity and independence of the farm gave character to the national life; to-day it is the complexity and artificiality of the city which govern. The nineteenth century was a period of expansion. Particularly in the earlier part of it was the subduing of new land the fundamental consideration of national development. This was the period of internal improvements, the building of roads and canals, and later of railroads. It was the adolescence of the American people. At such a period the great demand is for accessions of population, and we do not wonder that many of the writers of that day were frank in their demands for the encouragement of immigration. And even though in the thirties and forties the miserable shipping conditions and the large number of incoming paupers aroused a counter current of opinion, still the immigrants found a logical place on the great construction works of the period as well as on the vacant arable lands.

This period is past. The labors of the typical alien are not now expended on the railroad, the canal, or the farm, but in the mines and the foundries, the sweat-shops and the factories. The immigrants of to-day are meeting an economic demand radically different from that of a century or half a century, yes, we may say, a quarter of a century ago.

The change in the scale of production which the last half century has witnessed must have an important bearing on immigration problems. The early immigrants, to a very large extent, came into more or less close personal relations with their employers, often working side by side with them on the farm or in the shop. Now foreigners are hired by the thousands by employers whom they perhaps never see, certainly never have any dealings with, the arrangements being made through some underling, very likely a foreigner himself. Working all day side by side with others of their own race or of other races equally foreign, and going home at night to crowded dwellings, inhabited by aliens, and with a European atmosphere, the modern immigrants

have but slight commerce with anything that is calculated to inculcate American ideals or contribute any real Americanizing influence.

Perhaps the most profound and far-reaching change which has taken place in American racial conditions in the last century, one which, nevertheless, has received surprisingly scant consideration in a scientific way, is the decline in the native birth rate. Owing to the inadequacy and unreliability of the vital statistics of this country, there is no way of accurately representing this decline in figures. But there can be no doubt that a pronounced decline has taken place.

During the colonial period, the growth of population in America was a source of constant wonder to Europe, and Malthus chose the American continent as a striking example of rapidity of natural increase, inasmuch as the population doubled every twenty years. Remembering that the immigration to this country was small in the colonial period, we have here an indication of a very high native birth rate. This exceptional rate did not quite maintain itself during the first half century of our national existence. Yet even during this period the rate of increase was very high. The population of the United States in 1810 was 1.84 times as great as in 1790, and that of 1840, 1.77 times as great as twenty years earlier. Since the immigration during all this period was very slight, this increase may also be taken as representing a very high native birth rate. In considering the data in this respect which the last census furnishes, it must be borne in mind that we now have a large foreign-born element in our population, of which the birth rate is very high, and that our present enormous immigration causes large additions to our population which are not due to births at all. Remembering this, the fact that in 1900 the population of the country was only 1.52 times as large as in 1880 must indicate a tremendous fall in the native birth rate.

That such a fall has actually taken place practically all students of the subject are agreed. Mr. S. G. Fisher has estimated the rate of native increase by decades. This increase has fallen from 33.76 per cent. in the decade ending 1820 to 24.53 in the decade ending 1890. This decline is most marked in those States



which are most densely populated and to which the great bulk of our immigrants are going. There is eminent authority (Walter Rauschenbusch,<sup>2</sup> F. A. Bushee,<sup>3</sup> etc.) for the opinion that at the present time the native population of parts, if not the whole, of New England is not even maintaining itself. The same influences are at work in other parts of the country. There is very good reason to believe that the immense immigration of the last seventy years has been one of the great causes contributing to this result.

The discussion of this interesting topic, is, however, apart from the purpose of the present paper. The point to be emphasized here is that owing to this low native birth rate our present immigrants are being received by, and are mingling with a people, not vigorous and prolific as in the early days, able to match the crowds of aliens with a host of native-born offspring, but weak in reproductive power, and constantly decreasing in the ability to maintain itself. Oppose to this low native birth rate the tremendously high rate of the foreigners, and we see that the crowding out of our native stock is going on with much greater rapidity than ever before.

Finally as to quality,—what shall we say? What is quality in an immigrant? Who shall tell us what are the desirable characteristics of incoming aliens? But after all, it is not our present purpose to discuss desirability or undesirability, but to point out differences. Leaving aside elements of quality which are inherent in race, and those differences in physique, illiteracy, etc., which are more or less obvious, as well as those changes, many of them decidedly beneficial, which have been wrought by the application of the federal immigration laws, let us consider one or two elements of difference which are distinctly characteristic of the new immigration.

First, the degree of independence which is implied in the act of migration. There is an interesting little book in modern Greek by N. Gortzis called "America and the Americans." The following statement is translated from one of its pages:

<sup>2</sup> Rauschenbusch, Walter, "Christianity and the Social Crisis," p. 273.

<sup>3</sup> Bushee, F. A., "The Declining Birth-Rate and Its Causes," *Popular Science Monthly*, 63:355.

"But whatever may be their (the immigrants') motive, they are superior to the customary type of their race. The fact that they do not shrink from crossing an ocean three thousand miles in extent to seek new homes and a new life in a world wholly new and strange to them, is enough to prove that their spirits are ambitious and their bodies strong to brave danger, to encounter the unknown, to undergo sacrifice far from the environment where they were born and spent the years of their childhood."

This represents an idea which is undoubtedly more or less prevalent in regard to immigration, or at least was at an earlier date, when there was more of truth in the notion. But it scarcely represents correctly the modern condition. Many of the migrations of two or three centuries ago were inspired by religious or political motives, or very often by the combination of the two. Such was the exodus of the Huguenots from France, of the Palatinates from Germany, the Puritans from England, the Scotch-Irish from Ireland. In such cases as these, emigration implies strength of character, independence, firmness of conviction, moral courage, bravery, hatred of oppression, etc.

We may go further and say that the earliest emigration from any region at any time involves a certain degree of ambition, independence, courage, energy, forethought, all of those characteristics which are required in the individual who forsakes the known for the unknown, the familiar for the untried, the stable for the unstable, the certain though hopeless present for the hopeful but uncertain future. Such were the early immigrants to this country from every land,—not North European alone, but South European. They possessed something of the intrepidity and daring of pioneers. They had the strength of character to break the shackles of age-long tradition and custom, and, taking their destiny in their hand, seek their fortune in a new and unknown land. In this respect all new immigration differs from all old immigration.

The modern immigrant to the United States is in no sense going to a new or unknown land. American life and conditions, particularly economic conditions, are well known in those sections of Europe which furnish our large contingents of immigration. The presidential election, the panic, the state of the crops in the United States, are household topics of conversation.



Almost every individual in the established currents of immigration has at least one friend in this country. Many of them know exactly where they are going and what they are going to do. To a host of them the change is no greater than to go to the next village in their native land, perhaps less so. For as likely as not, just as many of their friends and relatives are awaiting them in the new country as are lamenting them in the old.

And how easy the way is made for them! If their ticket is not actually sent to them from America, probably all or part of the money with which it is purchased came from America. At least they may now secure a ticket direct from their native village to their ultimate destination in America, and every stage of the journey is made as smooth and easy for them as the ingenuity of financially interested agents can compass. Induced immigration has always existed since the days when the press-gangs in the coast towns of England carried inducement to the point of abduction. But probably never in the history of our country has artificially-stimulated immigration formed so large a part of the whole as now.

Another characteristic of the new immigration is the large number of "birds of passage," those who come and go, with the change of seasons and of economic conditions in the United States. They have no fixed abiding place in this country, nor any intention of remaining here permanently. Their aim in life is to spend as much time in the United States in periods of economic prosperity as is necessary to accumulate the comparatively small sum required to support their declining years in ease on the sunny slopes of their native land. A very large proportion of the Italians belong to this class, as do some of the Greeks and doubtless other nationalities. In the year 1908 the traffic of aliens between the United States and Italy resulted in an exodus from this country of 79,966. In the following year there was an influx of 89,183 from the same source.

As far as this class is concerned, the problem of immigration has shifted from the question of the acceptability of the aliens as permanent citizens, to that of the desirability of a transient, foreign laboring force, dwelling abroad, but coming and going in response to the fluctuations in economic opportunities in this

country. This is a new aspect of the situation. The Germans, the Irish, and the Scandinavians came seeking a home, expecting to cast in their lot permanently with the people of their adoption. This new development must considerably change the economic aspect of immigration, its relation to wages, the standard of living, over-production and a score of similar questions.

The foregoing paragraphs lay no claim to being a comprehensive survey of the immigration problem. The effort has been made to avoid as far as possible the discussion of the benefits of the changes noted, while demonstrating that the changes have taken place. Perhaps no one of these changes, in itself, is of sufficient weight to merit any great amount of public thought. But taken together, there can be no doubt that the changes in conditions which differentiate the present immigration from that of the past are profound and vital. The whole immigration problem must be discussed, as it were, *de novo*. The old arguments and conclusions must be reviewed in the light of present conditions and tendencies. Judgments which were once valid are no longer so.

The unfortunate fact about all such discussions is that they must be largely predictive in character. One of the greatest dangers in sociological reasoning is that of allowing too little time for the deliberate forces of human existence to work themselves out. Arguments based on the supposedly observed effects of immigration upon this country are liable to be viciously fallacious. There has not yet been time for the ultimate effects of immigration even to begin to manifest themselves, certainly not of the new, probably not even of the oldest. The best that can be done is to scrupulously observe apparent tendencies, and to construct arguments, necessarily *a priori* to a large degree, which shall be as logical as possible, and shall rest firmly upon such laws of social development as have thus far been conclusively established.

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## BOOK REVIEWS.

*Chinese Immigration.* By Mary Roberts Coolidge. New York: Henry Holt & Co., 1909—pp. x, 531.

Perils of prejudice greatly beset the subject of the Chinese in America. The story of our treatment of this group of immigrants during the second half-century of our national career demands the exercise of greater patience and judgment than perhaps any other controversial topic in American history. Mrs. Coolidge is possessed of several advantages which fit her to undertake the uncomfortable task, and it would be unfair to deny her at the outset of any notice of her book the high praise of having achieved a really remarkable success. As a Professor in Stanford University, she had opportunity both to assemble materials for the study and to test their value in classroom work. As a resident of California and familiar with the arguments advanced there against Chinese labor, she was able to observe, if she chose, effects of that State's policy in relation to this labor as one might watch a laboratory experiment. Granted the training and the temper which belong to a successful instructor, and we recognize in the author an equipment altogether unusual for the work.

The result is a volume of positive value. Within the reasonable compass of five hundred pages are to be found a fairly complete account of the half-century of the Chinese influx into California, its social and economic features, and the legislation which concerns it. The story is told with spirit and fairness, and bears evidence of wholesome condensation—last and rarest virtue of the devoted student. It is hardly surprising that the publication of a book so honestly written should have been followed by some outcry from the Pacific coast and by attacks upon the author from a small number of officials whose acts are recounted in her chapter on the administration of the exclusion laws. She might have been more politic, but it is difficult to declare any of her statements unwarranted by documentary proof or to detect per-

sonal bias in them. The real trouble lies in a detestable and cowardly policy enforced by an

"immigration service about which nobody cared very much, not even the politicians who had brought it into being, which had been filled up with ignorant, narrow-minded men whose idea of effective enforcement was simply to shut out more Chinamen, no matter what class, by constantly greater severity, suspicion and intimidation. Under Mr. Powderly those officers who pursued the Chinese most unremittingly were apparently the most favored. In California an invariable symptom of official ambition for political preferment has been zeal in administering the exclusion law; and the sword hanging over the head of every office-holder for twenty-five years past, has been leniency to the Chinaman" (p. 328).

It is a deplorable episode in our national history, for which not California alone but the whole country is to blame. The only effective reform in such a case is the education of a public opinion to be secured through a frank avowal of the truth and its publication in such readable and accessible shape as in the present book.

The subject of Chinese immigration to these shores is here considered under the three heads of "Free Immigration," the initial period of three decades following the Mexican War, "Restriction and Exclusion," three decades of anti-Chinese legislation, and "Competition and Assimilation," six essays of considerable interest upon its economic and political phases. After an introductory chapter on the characteristics of the Chinese people, as admirable as anything that has been written about them in the same space, the story passes from the period when "this worthy integer of our population" were cheerfully welcomed by Californians, to the culmination of their gathering prejudice in desperate attempts to eject them by force. In its struggle for existence the white race has never been distinguished for urbanity when dealing with aliens. The trouble began in the gold-fields, when white miners of all nations drove out first their colored competitors, and then the French, Mexican and Chilenos, to vent the whole stress of their racial prejudices against the Chinese.

In a community composed largely of adventurers without traditions of legal processes the natural human tendency to monopolize a good thing inevitably involved primitive methods of violence.



When the simple plan of the savage failed in this endeavor because of highly distasteful treaty obligations on the part of the Federal Government to a foreign State, Californians assumed a bitter political tone and made the most of the unhappy fact that the votes of their state had to be secured for the Republican party. The subserviency of the leaders of national politics to a sectional demand in this matter recalls the abasement of Democratic leaders to slave owners in the period before the Civil War; as a policy it seems to have been as little justified by advantage in the later as in the earlier instance.

The Burlingame Treaty of 1868, which had been actually drafted by an American Secretary of State and in a measure thrust upon China, secured free immigration from both countries. Twelve years later a commission was sent to Peking to negotiate terms whereby the Government of the United States might restrict the coming of Chinese to this country to merchants and students; the past thirty years have been more or less effectually devoted by Congress to stretching this reasonable treaty privilege into a right to prohibit the importation of Chinese labor altogether. The melancholy features of this long endeavor have been its defence by mendacious allegations derogatory to the Chinese and the cavalier tossing of the friendship of a great nation into the arena of domestic political controversy as an item of slight consequence. Happily, as the issue begins now to assume increased national importance, and the actual truth about it is made generally known, the dishonesty involved in advocating and administering the restrictive laws must disappear before the grave menace of our discredit in the Far East.

Some studies in the concluding chapters of Mrs. Coolidge's book are of considerable economic interest and deserve more attention than can be given them here. In the three chief lines of industry—shoes, cigars and woollens—in which they have been employed in California, it appears that the Chinese have replaced white children and women rather than men; that "Eastern (American) rather than Chinese competition set the standard of success; and that at the time when the Chinese were most numerous, wages in manufacture itself—with the exception of cigar-making—were still much higher than in Eastern factories. . . .

Since the Chinese have become an inappreciable factor among operatives, and in spite of the increase of women and children, these manufactures have stood still or fallen behind." As to labor on the land, it is at last confessed even in California that it is no longer a question of competition against white workers but of obtaining any laborers whatever industrious enough to make her farms and orchards pay. With a return to the same economic need which confronted her in the early sixties, California is likely to return to her earlier desire for at least some supply of Oriental labor. Other facts revealed in these chapters show that Chinese here spend about as much on food as immigrants from Europe, their superior economy and skill in cooking being the chief reasons for their greater wealth when they end their working careers.

F. W. WILLIAMS.

Yale University.

*Social Forces.* By Edward T. Devine. New York: Charities Publication Committee, 1910—pp. 225. \$1.25 postpaid.

This little volume comprises twenty-five editorials, which discuss social problems of more or less permanent interest. Together they embody the author's special contribution to "The Survey," and constitute a scholarly recognition of some of our most serious social evils of the present day, with suggestions and ideals as to the best remedies, while at the same time they give us an impressive view of the author's social creed. As editor of "The Survey" magazine, Dr. Devine focuses on American problems the universal experience of social work gathered weekly by the magazine. "His task is to interpret editorially, to apply practically and to criticise constructively." The book is a formulation of the so-called "new view" of which Dr. Devine is at once exponent and advocate, and which sums up "the new view, prophetic though it be, of a social order in which ancient wrongs shall be righted, new corruptions seen and prevented, the nearest approach to equality of opportunity assured, and the individual rediscovered under conditions vastly more favorable for his greatest usefulness to his fellows and for the highest development of all his powers."



Like Professor Patten in his "New Basis of Civilization," Dr. Devine, in practically all the problems he presents, believes that "the differentiating factors are economic rather than moral or religious, social rather than personal, accidental and remediable rather than characteristic and fundamental" (p. 47). "Dependence and privation are due to maladjustment rather than depravity" (p. 48). There are "no differences between the poor man and his normal neighbor which cannot be rapidly obliterated." Not only child waste, but disease, ignorance, overcrowding, poverty, unemployment, misemployment, exploitation—in a word, whatever prevents the individual from attaining the normal standards of society at any given time, in the last analysis, is due to economic or social causes and not to fundamental differences in personality.

Dr. Devine is not only a student of the practical, but believes likewise that the perennial, sovereign, ruling power in men is the ideal. "The greatest social force in the world is the quickening influence of a high ideal" (p. 203). Believing that constant renewal of the mind is a condition of personal and social growth, he urges the social worker to release new energies and latent powers now unused because stifled by deliberate greed and injustice, or remaining dormant because of neglect and indifference. Out of the gloom of this social neglect is to come a new sentiment, embodying a stronger conception of kindred, a nobler family life, a more patriotic passion for country—a vast, achieving, prophetic humanity.

The author sees already the outlines of the new and better methods ready for use as soon as society will use them. "Education, prevention, reformation, the careful segregation of hardened from new offenders, probation, indeterminate sentence, rehabilitation, the elimination of politics, the selection of humane and competent public officials—they are all there, they have all been tested, their efficacy has been shown, but we are not using them" (p. 204).

Many students, while heartily welcoming the stirring, enthusiastic, and stimulating emphasis Dr. Devine, through his "new view," gives to the solution of our social problems, will still cling to doubts as to the relative weight he gives to the economic

or materialistic factors as opposed to what many still believe to be the personal factors; but his program, while it may not receive universal approval, is a sane call to a definite, concrete struggle with those unfortunate elements in society which are constantly handicapping our social welfare. Those interested in the best literature dealing with problems of social advance will find this little book suggestive, stimulating, and helpful.

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*Responsibility for Crime. An Investigation of the Nature and Causes of Crime and a Means of its Prevention.* By Philip A. Parsons. New York: Longmans, Green & Co., 1909—pp. 194. \$1.50.

This is a doctor's dissertation and is published in the Columbia University Studies in History, Economics and Public Law.

The principal criticism to be made is that this book does not fully justify its title, which implies a comprehensive treatment of the subject of crime. It is, on the contrary, a series of more or less detached essays on certain criminal topics, as, for example, capital punishment and the jury. Dr. Parsons has, however, brought together a good deal of interesting material from his reading and most of his conclusions are admirable.

In the third chapter "on the general basis of Professor Giddings' explanation of society as a product of like response to stimuli," he proposes the following definition of crime: "*Crime is the normal function of an abnormal man.*" This definition is illustrated by means of diagrams each of which shows the ratio between the criminal personality and the stimuli to crime in the case of each of the different classes of criminals. For example, in the case of a crime committed by a born criminal the criminal personality involved is very great while the stimuli are small. In the case of an accidental criminal the criminal personality is very small but the stimuli great.

In the fifth chapter due weight is given to the hereditary causes of crime and a salutary warning uttered against the belief that "amelioration of social conditions is possible to a sufficient extent to materially lessen the amount of crime." The later chapter on



propagation is closely related to this one, for in it is discussed the only possible means of eliminating the hereditary factors in crime, namely, by discouraging and preventing as far as possible the propagation of the class possessing these hereditary tendencies. In this connection might very profitably have been discussed the proposals of the founders of the new science of eugenics.

In the eighth chapter the weaknesses and faults of the jury are exposed and it is proposed to substitute a board of experts for the jury. In the following chapter public defense in criminal trials is advocated and indemnification by the State to those wrongfully accused and imprisoned for crime.

On the whole, this book is suggestive of a scientific analysis of the nature of crime and of an enlightened and progressive method of dealing with it.

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*Cartells et Trusts.* By Et Martin Saint-Léon. 3d ed. Paris: J. Gabalda & Cie, 1909—pp. x, 266.

The first edition of Saint-Léon's valuable work on Cartells and Trusts was published in 1903. As the author attempted to describe the actual status of the trust and cartell in the several modern nations, in addition to presenting the general principles upon which they have been founded, he has been obliged to revise the book occasionally to keep it up to the times. As he says, many trusts and cartells have been abandoned and many new ones have been formed during the six years since the first appearance of the work. Moreover the form of organization is continually changing. With this view of the situation every well-informed student will agree. Many, however, will take exception to the statement that the most prominent characteristic of the past six years in the United States is the failure of the brave but unfortunate campaign of President Roosevelt against the trusts. Few of the trust officials will agree with this, although some of the radical reformers might. In general the author calls attention to the recent movement of great importance, the formation of many cartells among small manufacturers and merchants for the purpose of protecting their interests against the powerful

organizations in the greater industries, and again, the organization of cartells composed of manufacturers and the producers of the raw material which the manufacturers are using, especially in the iron, steel and metal industries, and in addition the acquisition of the works finishing the goods, thus enabling them to dictate the terms of the sale of the products.

After reviewing the situation in the various modern industrial countries, M. Saint Léon concludes that England has preserved free competition with greater success than any other of these countries, partly owing to the ideals of the English industrial leaders, partly to the English laws, and partly to the English free trade policy. He, however, notes that international trusts are of growing importance and are likely to prove a problem in the immediate future. In conclusion he observes, as a result of his study, first, trusts permit the scientific organization of industries, control production in a rational way, lessen the cost of production, and eliminate the wastes incident to the competitive system; and second, when the consolidations are carried to the point where these organizations control the entire production, they constitute an anti-social phenomena whose natural end is a monopoly, and consequently the cartell system tends to establish a régime of industrial tyranny prejudicial to the public interests. To prevent such unfortunate results, the author advocates publicity of accounts, public supervision of capitalization, and the revision of the tariff in those industries controlled by cartells and trusts, rather than the anti-trust law policy which has characterized both the federal and state governments in the United States. Industrial supremacy, he concludes, will belong to that nation which discovers the best method of controlling the trusts in the interests of the public welfare.

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University of Illinois.

*Traité de Droit Public Belge.* Par Paul Errera. Paris: V. Giard & E. Brière, 1909—pp. 821. 13 fr. 50.

After a brief review of the legislative sources of Belgian law, covering the French, Dutch, Revolutionary, and Constitutional



periods, the author of this volume gives a dignified and well-arranged account of the constitutional and administrative law of Belgium. The provisions of the constitution of 1831 are discussed in detail, and considerable attention is devoted to those unwritten parts of the constitution resting upon established custom. This unwritten part comprises the development of government by a cabinet of responsible ministers precisely similar to that in England. The desuetude of the king's right of veto, *habeas corpus*, and the jury system are titles that attract us. The judiciary have no power to declare an act of the Congress unconstitutional, and the author regrets that they have no power to issue injunctions. The right of local self-government is so highly regarded that the author ventures to use the phrase "provincial and communal sovereignty." His observations on centralization and decentralization vividly remind us of "State's rights."

There is presented a large amount of Belgian material for the student of comparative administrative law. Some of the most interesting chapters are those on education—a burning question in Belgium as in France—local government organization, roads and means of communication, the soil and its resources, and social legislation. As to the power and accuracy with which the author deals with the finer and more difficult parts of his field, an outsider is scarcely competent to judge; but the work gives every appearance of accuracy, completeness, and soundness and sanity of judgment.

In a large appendix, the legal status of the Congo and its administration is set forth, including the text of the new law passed in 1908, embodying the recommendations of various commissions of investigation. Doubtless, this contains much needed information for the thousands of well-intentioned but ill-informed critics of the late Leopold II and his relation to the Congo.

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*The Conflict over Judicial Powers in the United States to 1870.*

By Charles Grove Haines. Columbia University Studies in Political Science, Vol. XXXV, No. 1. New York: Longmans, Green & Co., 1909—pp. 180. \$1.50.

This pamphlet gives an interesting and accurate account of the process by which the Supreme Court of the United States has reached its unprecedented position of final arbiter on the constitutionality of all laws, both Federal and State. This position has been attained, not by definite and conclusive action of the people in the constitutional convention, but by growth and practice as authorized and sustained by general public sentiment. This position has often been challenged, and the court has sometimes been humiliated. The struggles caused by the court's attitude have always roused the strongest passion and the deepest interest. The attack upon the court's position has been led at different times by Jefferson, Jackson, Lincoln, Chief Justice Gibson, and a dozen different States. In some cases force was advocated, authorized, and used. The State of Georgia once executed a criminal in defiance and contempt of an order of the Supreme Court. The history of these matters prior to 1870 cannot fail to interest us to-day, in the light of the many similar recent conflicts arising out of State control of corporations, the liquor traffic, injunctions in labor controversies.

The author considerably exaggerates the change in the course of judicial decision under Taney from that under Marshall, and cites decisions which in fact show no such change. If such cases as the Charles River Bridge Case, 11 Pet., 420, and *Luther vs. Borden*, 7 How., 1, really indicate such a change, the author's exposition of them fails to show it. The author elsewhere himself states that the principles of judicial interpretation formulated by Marshall became a judicial tradition and grew stronger during Taney's period. The difference in the *political* views of Taney and Marshall is not greatly in evidence in Taney's actual decisions. However, the document under review cannot fail to give to the student a better knowledge of the subject and a clearer understanding of the origin of judicial power, its strength, its weakness, and its dependence upon public sentiment.

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## RECENT LITERATURE.

*The Approach to the Social Question.* An Introduction to the Study of Social Ethics. By Francis Greenwood Peabody. New York: The Macmillan Co., 1909—pp. 210. By funding all social questions in a single "The Social Question," Professor Peabody means to point out that the bottom issue in them all is some struggle between self-interest and the general good. The book is a review of the several sciences which bear on social questions, in order to estimate what each one in turn may contribute to the solution of the fundamental problem. Social science is judged inadequate because it does not succeed in unifying its phenomena, and because the pathologist cannot supply the place of the physician. An attempt at a complete theory of society leads beyond social science to a social metaphysics, or sociology proper; and sociology, thus defined, is and must be for indefinite time too much of a problem itself to aid in solving any other problem. The main discussion of the book is taken up with the contributions of economics and ethics. The author seems to make economic science responsible for the social corollaries which have been associated historically with economic doctrines. Professor Sumner's application of *laissez faire* principles to social obligation is criticised (p. 56 ff.); and this as well as the contrasting tendency of socialism is judged incompetent. But the humanists who would substitute ethics for economics have done no better. The Social Question is primarily a moral question; yet "a social scheme without an economic method is incapable of realization." Schmoller's word is approved: "Industrial life may be regarded either as a system of natural forces, or as a system of ethical forces. It is each according to the point of view from which it is studied." But it is suggested that the economic programme must be a corollary of the ethical idea and not vice versa. The discussion of ethical principles, together with their religious outcome, occupies the remainder of the book; which is a plea for ethical idealism, the philosophy of self-realization through self-sacrifice, as opposed to an egoistic or prudential ethics. Professor Peabody makes interesting applications of his doctrine to problems of the family, of poverty, of labor, and of democracy (p. 147 ff.)

*Abraham Lincoln, The People's Leader in the Struggle for National Existence.* By George Haven Putnam. New York and London: G. P. Putnam's Sons, 1909—pp. viii, 292. This book, in its original form a popular address delivered on the occasion of the one hundredth anniversary of the birth of Lincoln, and now enlarged by the inclusion of military details and of the Cooper Institute address of the War President with introduction and notes written in 1860, must be assigned a low rank in the vast literature of which it forms a part; the style is generally attractive and interesting, but the work is in no sense serious and scholarly and it contributes to the subject nothing new of importance. It lacks the intellectual charm and literary grace of Schurz's short sketch, as well as the strength and breadth of view of the longer work of Morse. Some mistakes may be noted. In so far as Mr. Putnam intimates that the vote of the New York delegation in the Republican National convention in Chicago in 1860 had weight in securing the first nomination of Lincoln to the presidency, he is widely at variance with the facts of the case; the date of the highest premium on gold was the summer of 1864 and not 1863; and lastly, the Republican National convention in 1864 was held in Baltimore and not in Chicago. One more book is added to the long list of works covering the life of Abraham Lincoln, and this is all that can be said.

*The Last American Frontier.* By Frederic Logan Paxton. New York: The Macmillan Company, 1910—pp. xi, 402. \$1.50 net. This book in the series of *Stories from American History* attempts to tell of the occupation of the region west of the bend of the Missouri river. In the mind of the author this takes the form of a struggle by the American with the Indians and against the natural obstacles of the country, extending from the admission of Missouri into the Union in 1821 to the final conquest in 1885. The greater part of the book is taken up with accounts of the routes and means of travel, and of the troubles with the Indians. The author has evidently read extensively in his study of the subject, and in the preface he expresses the "hope, before many years, to exploit in a larger and more elaborate form



the mass of detailed information upon which this sketch is based." The work is open to criticism on the ground of proportion, too much space being devoted to the Indians, and too little attention given to other aspects of the frontier movement. But that is perhaps inevitable in a first essay. Statements of fact seem to be fairly accurate, and the book is written in an easy, readable, not to say, breezy style. A "Note on the Sources" covering six pages and an index of ten pages are commendable features.

*The Fate of Iciodorum. Being the Story of a City made Rich by Taxation.* By David Starr Jordan. New York: Henry Holt & Co., 1909—pp. xii, 111. \$0.90 net. This little allegory first appeared in the *Popular Science Monthly* for August, 1888. It is now reissued in book form, with a preface and notes. The story is a keen and humorous exposure of some of the time-worn "arguments" for the protective tariff as a promoter of prosperity. To the reader who is familiar with the facts of our tariff history, the book offers an hour's entertaining reading, together with some food for serious thought.

*The History Sheet or Case-paper System.* London. P. S. King & Son, 1909—pp. xi, 167. 2s. net. This is a series of papers by various poor-law officials in England describing the benefits experienced by registration in a rudimentary way of the facts concerning families. Such systems have been carefully worked out in this country years ago, as one of the contributors admits, and no well regulated relief organization, private or public, attempts relief work without some such system.

*Upbuilders.* By Lincoln Steffens. New York: Doubleday, Page & Co., MCMIX—pp. xv, 334. This is a somewhat impressionistic series of sketches of the following men and their work: Mark Fagan, Everett Colby, Ben Lindsey, Rudolph Spreckels, and W. S. U'Ren. Certainly none of the picturesque aspects of their careers are neglected; here is, for those who desire it, a certain titillation of the obvious moral sentiments.

## BOOKS RECEIVED.

- ALLEN, W. H. *Immigrants' Hoards: The Hidden Factor in Financial Disturbances.* Reprint of an article in the December, 1909, issue of *Moody's Magazine*.
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August, 1910.

## CONTENTS

	PAGE
COMMENT, - - - - -	113
The New Leadership in Legislation; Arrested Development of Legislative Organs; Some Items in the Presidential Program.	
A BETTER CONTROL OF PUBLIC EXPENDITURE, -	119
<i>W. M. J. Williams.</i>	
CAPITALIZATION AND MARKET VALUE, - - - -	132
<i>H. J. Davenport.</i>	
UNIONISM AND THE COURTS, - - - - -	144
<i>George Gorham Groat.</i>	
THE SECOND-CLASS MAIL RATES, - - - - -	159
<i>Charles William Burrows.</i>	
TYPICAL COMMERCIAL CRISES VERSUS A MONEY PANIC, - - - - -	168
<i>Harry G. Brown.</i>	
NOTE, - - - - -	177
The United States Steel Corporation and the Panic of 1907.	
BOOK REVIEWS, - - - - -	188
Common's A Documentary History of American Industrial So- ciety; Yung Wing's My Life in China and America; Folwell's University Addresses; Veiller's Housing Reform; McCain's The Diminished Purchasing Power of Railway Earnings; Watkin's Shippers and Carriers of Interstate Freight; La Monte and Mencken's Men versus the Man; Fite's Social and Industrial Conditions in the North During the Civil War; Chance's Poor Law Reform; Butler's Women and the Trades.	
RECENT LITERATURE, - - - - -	211

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Legislative Organs; Some Items in the Presidential  
Program.*

TWO incidents of the recent commencement season, trivial in themselves, have the significance of straws, showing the trend of our constitutional development. One of these straws was the detention of President Taft in Washington at the time of the Yale Commencement. There were strong personal reasons drawing him to New Haven. These had to yield to the need of remaining in Washington in order to secure the passage of certain laws which he desired to have enacted. Another straw was thrown to the surface at Harvard, when Governor Hughes took advantage of the presence of ex-President Roosevelt to ask him to make a public appeal in behalf of the Primary Election Bill, then pending before the New York Legislature. Both of these incidents mean the same thing. They show the increasing influence of the executive upon legislation, both in the Federal and in the State governments. We are no longer content to accept the traditional division of functions, according to which the laws are made by the legislature, and the executive is merely entrusted with their enforcement. Little by little, we have come to expect the president of the United States to become a leader in legislative policy. He is occupying more and more the position of the prime-minister of England, who blocks out the government's policy at the beginning of each session and with the



aid of his cabinet is responsible for carrying through as much of it as he can. The tendency is not quite as marked in our States, which have, in many cases, limited by constitutional provisions the powers of the governor, and in the instance mentioned above, the event proved that the governor was unable to carry his point. Yet, in spite of such limitations, a governor who would earn the respect and confidence of the people of his State must be more than a mere executive, and must impress himself upon legislation.

To those whose horizon is bounded by the words of the Constitution, and who do not realize that the best of institutions must change in the course of years in order to adapt themselves to changed conditions, this tendency must seem to indicate a dangerous perversion of our fundamental principles of government. That there are dangers connected with it cannot be denied, and some of them were pointed out in our February number. But there is a danger of a different kind in allowing institutions to become fossilized, and when they change under the influence of circumstances, it is important to find out whether these changes are due to the necessity of meeting changed conditions, or to the perversity of individuals or classes.

Such a question can often be best answered by comparing home institutions with those of foreign countries. If we institute such a comparison between England and the United States, we are first of all struck with an apparent contrast. In the eighteenth century, the theory of the British Constitution was that the king represented the executive power, the parliament the legislative power, the courts the judicial power; and this was thought to be such a wise scheme that it served as a model for the framers of our own Constitution. In the course of a century, the power of the sovereign has apparently dwindled, while that of Parliament has increased, and in Parliament, the power of the House of Commons has grown steadily at the expense of that of the House of Lords. Thus the real controlling influence in the state is the popular branch of Parliament, which exercises that control through a committee, nominally made up of appointees of the sovereign, but practically made up of leaders who enjoy the confidence of the ruling party in the House of Commons.

In the United States the tendency seems to be quite different, inasmuch as the executive has apparently gained influence and strength at the expense of the legislature, while the powers of the latter have been still further curtailed through the right of the judiciary to pass upon the constitutionality of legislation. In fact, however, the tendencies, in England and the United States, though different in form, mean the same thing. They indicate the increasing need of leadership in legislation. In England the leadership has developed through the representatives of the people in the House of Commons. In the United States, it has developed through the president, who, though in form not chosen by the people, has grown to be in fact more directly a representative of the people at large than either house of Congress. This growth of the idea of leadership is all the more remarkable in our country in view of the deep-seated national objection to anything like one-man-power. Our laws and our traditions are alike opposed to absolutism, and yet we are gradually looking more and more to the president to formulate and to propose those legislative measures which are needed to satisfy certain demands, often vaguely, but none the less keenly, felt by the people at large.

This fact is obvious, if we contrast a presidential with a senatorial campaign. Of late years, during a presidential election, the candidates have tried to visit as many different sections of the country as possible and to present their views in public speeches to the voters. When a so-called senatorial campaign is in progress, it may easily happen that there is no real discussion, either of public questions or of the character and capacity of the candidates. Such incidents as the failure of the administration to reappoint a postmaster, known to be friendly to one of the candidates, or the claim that pledges were given several years ago, in a club, are heralded in the press as events marking the progress of the contest which is supposed to be going on. We always know the president's attitude on the questions of the day. We are often ignorant of that of our representative in Congress, excepting as it may be indicated by a party name.

The failure of representative bodies to meet the expectations that were entertained of them a century ago, is not confined to



the United States. When the present constitution of France was adopted, it was, like ours, modeled in a general way on that of England, not, however, on the English constitution of the eighteenth century, but on the English constitution of the second half of the nineteenth century. The president was accordingly put in the position of a constitutional sovereign, who reigns but does not govern, and it was expected that the real leadership would devolve upon a cabinet, representing, like the English cabinet, the legislature. The result has proved, however, to be disappointing. Ministries come and ministries go, but no ministry knows, at its advent, how soon or how suddenly a combination of hostile groups in the lower house may force it to resign. It thus becomes exceedingly difficult for any ministry to remain in office long enough to carry out a serious program. The recent success of Monsieur Briand in defying this group system and bringing about what now looks like a new era of parliamentary government in France, shows that the French, too, have at last realized the importance of leadership in legislation. This change is, therefore, quite parallel to that which has come about gradually in the power of the president of the United States, though assuming an entirely different form.

It is not possible within the limits of one short article to fully account for this very general failure of elected legislatures to do their work efficiently. One quite obvious reason lies in the increasing complexity of our economic and social life, which, coupled with higher standards of living and higher ideals of social justice, is making increasing demands upon the wisdom and skill of legislators. That the difficulty of these problems is recognized by legislatures themselves, is seen in the increasing tendency to make use of commissions, both to propose future legislation, and, on the other hand, to carry out laws involving a high degree of discretion and judicial ability. It is also seen in the increasing attention which is given to legislation by bodies of experts who are not in the legislature. Economists, business men, lawyers, are constantly studying social problems, and of late years they have begun to realize as never before that the problems of one State are often the

problems of many others. Indeed, they recognize that many of them are world problems, so that the discussions become not only interstate, but international. This summer, e.g., international congresses are to be held in Europe regarding Administrative Sciences, Public Care and Private Charity, Social Insurance, Occupational Diseases, Unemployment, and Labor Legislation, while in our own country the International Prison Congress is soon to meet. Indeed, so numerous have these international meetings become of late years, that it has seemed wise to call a conference of international associations, held in May of the present year, in order to discuss the relations of these different bodies to each other, and prevent duplication, conflict, and waste of effort. The international character of our problems is being recognized by practical business men as well as by students, and the National Manufacturers' Association is sending a commission abroad in order to study the subject of compensation for accidents. Many of these conferences, it is true, relate to other methods of action than legislation, but there is not one of them which does not make more or less demands upon legal enactment.

While the seriousness of legislation is thus being recognized by students, and while we are endeavoring to raise the standards in all of our professions by increasing the requirements of our law schools, of our medical schools, and our schools of science; while we are demanding that even our barber shall not approach the delicate task of removing our surplus hair lightly, or in ignorance of the sanitary and other problems involved, we demand nothing and expect nothing in the way of either training or experience from those who make our laws and on whose work depend questions of life and death, business contracts, and social relations. The last legislature of the State of Connecticut, e.g., passed 269 public and 495 private acts, or 764 laws in all; yet only 28 per cent. of the members of the two houses had had any previous experience in legislation. It must be clear, therefore, that we have failed to keep our legislative machinery up to date. We all know that increasing demands are made upon our legislators, and yet we have done nothing to equip them for their task. What the outcome is to be cannot be easily predicted.



Perhaps we shall develop on the lines of more skilled leadership outside of the legislature. There are undoubtedly dangers in this, for the leader cannot be omniscient. He must get his information from others, and even though he should try to take only expert advice, he is liable to be deceived. Perhaps we shall succeed in completely making over our methods of choosing legislators. We must certainly do something, unless we are willing to allow the art of legislation to lag behind all of the other arts in the application of scientific methods.

Recognizing the increasing importance of presidential policies, the YALE REVIEW has aimed to secure articles bearing upon some of the more important measures which have been advocated by President Taft. Two of them are treated in the present number. One of these is the reform of the postal system, a subject on which public opinion is often dumb, because the organs of public opinion are interested, or think themselves interested, in maintaining the present low postal rates for second-class matter.

Another subject of great practical value, but which does not appeal to popular emotions, is the budget. For years, students of finance have recognized that the United States has utterly failed to develop a rational and practical method of ordering its public finances. In some years we have proceeded cheerfully with a large deficit; in other years, we have maintained an almost equally embarrassing surplus, with the same indifference to business principles. The study which this number presents of the English Budget shows that, with the increasing complexity of financial conditions in England, the parliamentary control of expenditures has ceased to be as effective as it once was and as it is still popularly supposed to be. This experience has a direct bearing upon our own fiscal problems and should help in their solution.

## A BETTER CONTROL OF PUBLIC EXPENDITURE.

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### CONTENTS.

Growth of public expenditure in Great Britain and importance of its control, p. 119; methods applied by the House of Commons, the Comptroller and Auditor-General, p. 120; the Standing Orders, p. 123; the Estimates, p. 123; the Public Accounts Committee, p. 126; control by the House of Commons impaired by the mass of business, p. 127; proposed Committee on Estimates, p. 129; need of at least three such committees, p. 130; importance of reform in view of the contest with the House of Lords, p. 130.

AT the House of Commons, the other day, Mr. Worthington Evans "asked leave" to introduce a bill to extend the provisions of the Old-age Pensions Act. Whereupon the Speaker remarked that he understood the Honorable member to propose to place a charge upon the public funds, which it was not competent for him to do, as there is a "standing order" of the House that the Crown, through a minister, must recommend all such charges. The Honorable member was somewhat taken aback, for he was a new member, who found an entrance last January only, and who seemed to be quite oblivious of the history of Parliament which had led to the adoption of some of these rules to which the Speaker referred him.

This introduction may suffice to tell the reader how this subject of the control of public expenditure will be treated here by means of the practice of the British Parliament: and I may be allowed at the outset to add that as the subject is involved in some amount of detail no attempt will be made to place the subject in a historical setting, but rather to remind the reader of what obtains to-day in the House of Commons when matters of expenditure are to the fore.

A look around to other countries, whether in Europe or America, would seem to convey the idea that this subject of controlling public expenditure, of the need of economy in public disbursements, is widely felt. Modern life has so many demands, and there are abroad so many suggestions in the direction of



state interference, and state supply of wants, that expenditure is not remotely connected with either the implicit or explicit notion of the true sphere of state action. From that point of view the British practice must still be regarded as purely empiric. That eager souls and philosophic circles are discussing theories of government or ordering millenia by return of post in England is quite true: but no responsible party of men acts in public affairs except from a frankly empiric standpoint. The Briton is fond of dealing with all matters "on its merits": that avoids the trouble of a decision on a general proposition. As regards public expenditure it is evident, nevertheless, from evidence within and without the House of Commons, that a strong feeling is abroad that our expenditure is abnormally high, though perhaps without crippling the people, for that depends so much on the nature and objects of that expenditure. The need of a good strong control is acknowledged widely: and for my purpose it will suffice to point to the fact that expenditure has grown very fast of recent years, both in the national and the local charges. The national expenditure so recently as 1894-5 was first £101 millions; in 1909-10 it is £170 millions. The local expenditure of the United Kingdom of Great Britain and Ireland, for local purposes, is about £165 millions; and, need I remind the reader, both the national and the local authorities are responsible for heavy debts, which are, indeed, covered by the appropriations for expenditure to which references have just been made. The expenditure is, therefore, about £3-15.0 per head of the population: or, say, about 86 to 88 dollars per family on an average for *both* national and local purposes. Can there be any further question of the need of a good control? If there were, it would be found in the widespread conviction and knowledge that public expenditure is not frugal, though in England it is undoubtedly managed more carefully than was wont to be the case.

The methods of control adopted by the British Parliament are of several kinds. When I speak here of the British Parliament I am reminded at once that formal control is assumed by the House of Commons alone. This comes to light quite clearly in the elaborate arrangements for legislation and administration

of public funds made by the House of Commons, whereas the House of Lords has no standing orders dealing with money matters. In dealing with public expenditures the House of Commons uses statute law, and periodic votes, from year to year, or as the case may be. Some of the public charges are placed on the "Consolidated Fund," *i. e.*, do not require to be voted each season, but a larger portion by far is "on the votes." The arrangements for the discharge of this, the principal characteristic feature of the duties and privileges of the House of Commons deserve, however, to be set forth with circumstance, fullness, and care. Here, if anywhere, is the majesty of the people's freedom, here where their representatives, and they alone, set themselves deliberately to defray the expenses of the nation's commonwealth. I speak, of course, of the national charges; for, in theory, and in practice largely, the charges for local government are defrayed by local bodies, with the aid of grants from the central government, but yet chiefly by means of "rates" which each authority may levy in its own area.

The statutory part of the control of public expenditure in the United Kingdom is, perhaps, the most permanent, if also the least perceptible, of the services rendered by Mr. Gladstone when he was at the Exchequer, reforming the tariff, and providing for a due discharge of the people's trust in monetary matters. I refer to the Act of 1866, known as the Exchequer and Audit Departments Act (familiarily, the Audit Act), which provides a functionary who is called the Comptroller and Auditor-General, who also, by statute, has an assistant (besides his staff), and whose office is on the Victoria Embankment in London. For my purpose it is important to observe that this functionary is a comptroller as well as an auditor, and that both duties are an essential part of the method of control of expenditure adopted by the House of Commons. The Comptroller-General will not allow any money to issue from the Treasury, in Whitehall, without due authority. He receives a daily report also of the receipt of revenue, he requires a quarterly statement of receipts and of expenditure. He audits the expenditure afterwards by means of his staff, and satisfies himself that money has been appropriated properly. A case occurred, as recently as



1900, in which the Comptroller-General declined to issue his fiat for the payment of interest on the war-loan, because the loan had been raised on a mere resolution of the House of Commons, but the bill making that statutory had not become law. It was decided that he was right, though by a temporary accommodation the interest then due was paid. The Consolidated Fund was established by Pitt in 1787, and denotes the total revenue received by the State from various sources. Before that date the various taxes were appropriated to special heads of expenditure. The Consolidated Fund is now under the charge of the Comptroller-General, whose duty it is to allow nothing to issue from it save on strict authority. So, it is submitted, a due care for the fund has been secured, and economy is served. For the purpose of this paper it should be repeated also that the Comptroller finds some public expenditure payable by permanent statute out of the Consolidated Fund, such as the Crown's Civil list, the salaries of the judges, and the interest and other charges for the national debt. The rest of the expenditure, as has been said, by far the larger part, has to be provided by votes of Parliament, *i. e.*, the House of Commons, every year. In any case the Comptroller issues his fiat authorising the Bank of England or the Bank of Ireland to pay the demands made by the Treasury out of the Consolidated Fund moneys in their charge.

This action of the Comptroller and Auditor-General under the Exchequer and Audit Act is supplemented by the characteristic annual proceedings of the House of Commons in granting "supply" and in providing the "ways and means" to meet the supply demanded or required for the various public services. The "course of the exchequer," as they used to say down to only pre-Victorian days, is regulated by the Audit Act 1866, and the Public Accounts and Charges Act 1891, which Mr. Goschen passed, a measure quite subordinate to the Audit Act, which will long preserve the fame and efficiency of Mr. Gladstone in halcyon days. The House of Commons not only finds the "ways and means," the revenue to meet the charges on the Consolidated Fund and other public charges, but it undertakes to vote the Supply of money to be appropriated (under the Superintendence of the Comptroller-General), to the objects

placed before the House. This it does by means of the estimates placed before the House every year.

Approaching the "estimates" we come upon the standing orders of the House of Commons, those fiery trials of the inexperienced member, which are financially and otherwise of much significance. I have already shown a new member falling into the temptation to show his benevolence at the national expense only to find that S. O. 66 forbids the House to entertain a proposal for a money charge except when recommended by the Crown. The House must be in committee, too, when voting money; and furthermore, the House must have notice of at least a day before a proposal is made to incur a charge to be defrayed out of the Consolidated Fund. It will occur readily to those who have followed British history how old-time conditions have fashioned these rules of procedure; but undoubtedly they to-day serve to aid a deliberation in voting the public treasure which is not without value.

Again, before approaching the Estimates, it is to be observed how by S. O. 14, the House has provided for a leading, prominent place in its proceedings for "supply," or the voting of the money required.

"This house will, in future, appoint Committees of Supply and Ways and Means at the commencement of every session, so soon as an address has been agreed to, in answer to His Majesty's speech."

The characteristic function of the House of Commons is thus to supply the means to defray His Majesty's expenditures.

We come then to the estimates for the voted services, so called in contra-distinction to the services placed upon the Consolidated Fund. It is not understood as well as it ought to be in England how these estimates of Expenditure for the various voted services are required by law to be prepared and presented in the following order and time, every year:



Grants or services to which appropriation accounts relate	Dates after the termination of every financial year to which Appropriation Acts relate on or before which day are to be made up and submitted.		
	To the Comptroller-General by the Departments	To the Treasury by Comptroller-General	To the House of Commons by Treasury
Army	Dec. 31	Jan. 31	Feb. 15
Navy			
Miscellaneous Civil Services	Nov. 30		
Revenue Departments, etc.		Jan. 15	Jan. 31
Post office and Packets			
All other voted supply			

These dates by which the Estimates of Expenditure reach the House of Commons are seen to be closely connected with Standing Order 14, which was given above. In practice the Estimates from the Army, Navy, and Civil Service, these last comprising a large variety of the bureaucratic organization, are placed "on the table" of the House of Commons soon after the address in reply to the Sovereign's speech has been voted, at the opening of each annual session. The House is then seized with the demands to be made upon it for "supply." It happens, frequently, however, that before entering upon an examination of the estimates for the coming year, the House has to give attention to "supplementary" estimates for the year about to close. Amid many such demands, the House adheres to the plan of requiring estimates to cover expenditure for the whole year.

When the House, in committee, enters upon the consideration of the estimates, it does so under two disadvantages. The minister in charge of a department, or the Secretary to the Treasury, will propose a vote of a certain sum, but it is done to a House consisting of 670 members. The old form devised against ancient abuse of authority,—the committee of the whole house is not very efficient as a controller of the policy, or the detail, of the expenditure. Further still, in 1902, Mr. Balfour, who is not fond of the detail of government, induced the House in those warlike days to set up S. O. 15 which allots 20 days (or 23, if specifically voted) for the examination of the estimates of supply, and those days before the 5th of August each year. At ten of the clock on the last day but one of the allotted days the discussion stops, and the question is put with regard to the

votes in hand; and on the last allotted day at 10 P. M. the rest of the votes are put to the vote, and passed usually. That is obviously a most extraordinary order; but once placed on the list it remains there for an indefinite time, for the House of Commons is choked with business, and every leader of the House is most reluctant to turn aside to examine how the wheels of his machine are working. Some £135 millions are now required by votes from the House of Commons; and without question, the supervision of so vast a sum, so far reaching in its influence, is a task requiring devotion and time. The result has been of a character to astonish all who regard Britons as a people with a commercial genius and business-like habits. When the Chairman of Committees at 10 o'clock cries "Order! Order!" and proceeds to put the votes, not only is discussion stopped, but the proceedings become farcical, and behind the scenes, no doubt, there is tragedy. As large a sum as £53 millions have been known to be voted thus without discussion by the House, and of necessity without examination by any member, except of a most cursory character. The fact thus recorded is the heaviest condemnation which could be passed upon a House, which consents to overlook such an unhappy result. Some of the estimates, it may be, are framed with an eye to the chance of escaping parliamentary discussion. At any rate, in continuing to maintain S. O. 15, Mr. Balfour's maiden effort at "supply," the House of Commons abdicates most of its characteristic duty.

As one examines these arrangements and calculates their effect, a large and important element of policy is discovered. Though, as I have said, some portion of the public expenditure is governed by statute law, and requires no sanction annually from the House of Commons, the fact that so large a portion is left dependent upon votes of the House affords an opportunity to check the whole, places the control in the care of the House effectually. For the time during which the House sits every year—and business tends to force the sessions to be longer and to cover the larger part of the year—the money at the disposal of the Treasury is but small comparatively, and a practice obtains of voting a sum on account, but in accord with estimates for the several departments placed



before the House. These sums on account are usually placed afterwards in temporary consolidated fund bills, two of which are passed during the session, as a rule, to legalize the grants resolved upon already. That procedure toward the end of the session is repeated with regard to the remaining "votes," when all the estimates have been voted. The appropriation bill, as it is called, is then passed, which enables the Treasury to pay out certain specified sums for specified objects, and to borrow on account of the revenue to the total amount specified, while the revenue is being collected. The appropriation act is the House's final act in providing "supply" to meet the sovereign's demands. It is regarded still as the sovereign's demands, though since the reign of William IV (1830), and even before that, in part, the sovereign's own expenses have been kept quite apart from the maintenance of the public services in an efficient state.

Though I have spoken of the "final act" of the House of Commons in controlling "Supply," I must add a reference to the public accounts committee of eleven members which is set up every year "for the examination of the accounts showing the appropriation of the sums granted by Parliament to meet the public expenditure." This committee is a body which renders much useful service, for it is endowed with power to summon the comptroller-general, and other officers, to give an explanation of the matters which appear in the comptroller's reports on the accounts, as well as upon points which may arise in other ways outside that officer's audit. The criticism to be passed upon such a useful body is just this: that it is only a committee on accounts, it finds things out, but when it is too late: and finds irregularities which it is somewhat difficult to refer to a responsible person.

How does this method work in practice? As has been seen already, the arrangements have been found to place in the House of Commons a power of great importance—the power of the purse. That power has lain in those hands undisputed upon the whole, save when political crises arise over some legislation, and the undefined powers of the two Houses are appealed to, usually in the name of the House of Lords. The acknowledged supremacy of the Commons in money matters has been effective on

the whole: history confirms the potency of the arrangement by which the taxpayer's burden is managed by his elected representatives. One aspect of this power has been displayed recently in the attempt which Mr. Asquith's government is making to limit the veto of the Lords upon legislation generally, and to establish the unquestioned supremacy of the Commons in financial matters. In the attempts of parties in the House of Commons to manœuvre the Government into the hands of the Lords and their Tory friends in the Commons, the weapon of control of supply was found to be very effective. To vote supply, as explained above, for a short period only was effective once again, because no party in the House, likely to be called to administer, would take the responsibility of paralyzing the daily work of the departments. Whether in normal or abnormal times, in the piping days of peace, or amid the alarms of stormy revolution; it will be found probably that a tight hand on the purse will afford the holder much power. In ordinary times it may be said without hesitation that this general power is such as to keep the administration well in hand.

That, however, does not mean that in such ordinary times the control of the House of Commons over finances, especially over expenditure, is as great as it should, and as it might be. Those who know the amount of business which the House of Commons is supposed to transact will not be surprised at that assertion. The methods are wise in intention, but the practice is modified and conditioned by a state of things so far beyond all that the framers had dreamed of. While the care of the finances concerns the United Kingdom chiefly, the House of Commons has to legislate for India and other dominions beyond the seas, possessions subject to the British Crown in many widely scattered parts of the globe. The details of finance and expenditure, which are so trying to some people, find a secondary place in the minds of those who are attracted by the fascinating problems presented by the framing of commonwealths in Australia or in South Africa. Control of expenditure is squeezed into the least portion of time possible; and governments of all shades of policy are bent principally on "getting the votes." This has led to the passing by Mr. Balfour in 1902 of that amazing S. O. 15,



which allots twenty days only each session to the estimates, and its almost scandalous consequences, the want of any real superintendence of much expenditure which is sanctioned. To many British people the importance of a steady devotion to taxation and expenditure on the part of the House of Commons will have been brought home only by the stress of the present constitutional struggle: the Balfour S. O. and such practices have tended to obscure the importance of this, and perhaps that obscurity was not unintended in some quarters. It will be evident, therefore, that this question of a due control of expenditure is vitally related to a large question of organization, such as Home Rule, and to the powers of the various interests represented in the national constitution. If the House of Commons is to find time to give attention to the heads of expenditure only, such attention as will check the policy they enshrine, and will ensure a good and wise use of the people's treasure, there appears a pressing need of a large scheme for the devolution of much that it now attempts to do to other subordinate tribunals.

When describing the methods now adopted to superintend expenditure in the British House of Commons I did not stop to show how the principles adopted were not pushed into operation, or at best only a little way. The House, for instance, insists, as a whole, that it shall vote the money for the various services, naval, military, and civil; but it was shown that this was done in the dark, for no opportunity is allowed, in practice, to become acquainted with the merits of the estimates submitted to the House. This was felt as one of the chief reasons which led Mr. Balfour in 1902-3 to appoint a committee to inquire into our national expenditure in the United Kingdom. It was quite inevitable that such a committee should be found pointing to the defective treatment of the estimates by the House of Commons. That select committee of 1902-3 referred to this matter, as follows:

"But we consider that the examination of estimates by the House of Commons leaves much to be desired from the point of view of financial scrutiny. The colour of the discussions is unavoidably partisan. Few questions are discussed with adequate knowledge or settled on their financial merits: 670 members of Parliament, influenced by party ties, occupied with other

work and interests, frequently absent from the Chamber during the twenty or twenty-three supply days, are hardly the instrument to achieve a close and exhaustive examination of the immense and complex estimates now annually presented. They cannot effectively challenge the smallest sum, without supporting a motion hostile to the government of the day, and divisions are nearly always decided by a majority of members who have not listened to the discussion. Your Committee agree in thinking that the estimates are used in practice—perhaps necessarily by the Committee of Supply—mainly to provide a series of useful and convenient opportunities for the debating of policy and administration, rather than the criticism and review of financial method and of details of expenditure. We are impressed with the advantages, for the purposes of detailed financial scrutiny, which are enjoyed by select Committees, whose proceedings are usually devoid of party feeling, who may obtain accurate knowledge collected for them by trained officials, which may, if so desired, be checked or extended by the examination of witnesses, or the production of documents; and we feel that it is in this direction that the financial control of the House of Commons is most capable of being strengthened."

The select committee, accordingly, recommended that estimates should be referred every year to a committee for examination. That recommendation, made so by a well-manned committee, has not been acted upon yet. The idea has been urged upon the responsible government many times, and for a long time before the select committee of 1902-3 endorsed it. The principle endorsed by that committee is approved by most of those who have studied British methods of controlling public finances; but I venture to add that in detail the recommendation was insufficient. One committee on estimates was recommended: but one such committee is, palpably, unable to cope with the task to be undertaken. It has been shown above how the estimates for expenditure are tabled as soon as the Address to the Throne is voted at the opening of the session. Time, also, has been shown to be an enemy of the House of Commons, and of the public purse, according to present arrangements. The administration is kept short of money by deliberate policy, especially at the opening of a session, so that an early vote of money is of much consequence. The examination of the estimates by a committee, by one committee only, would be too deliberate and slow, if it



is to be more effective than the whole House in committee. In short, it appears to me that at least three committees on estimates should be appointed at the opening of each session, to which the estimates newly produced, and any others, should be referred for examination and report. These committees should be for the army, the navy, and the civil service estimates, respectively: and they might be directed to report within so many days. Their report and recommendations would, probably, become more weighty every year as the utility of such a reference would be recognized by the House, which would still retain for its own the duty of voting the sums demanded. The sums to be demanded would, most probably, be estimated with greater care in some cases, for the knowledge that they would be scrutinized by a panel of eleven or fifteen members would be felt by all to be a healthy ordeal. Nor does it appear to me that there is anything substantial in the objection raised sometimes to such a devolution to committees, viz., that ministerial responsibility would be destroyed, or at least decreased. Each minister would continue to be responsible for the demands of his department: but the House of Commons, called upon to supply millions of pounds, would vote that "supply" with a knowledge, and a readiness perhaps, unknown in these days, because it could do so with the report of a Committee on the figures before them. In any case, it is manifest that the voting of many millions of pounds without examination, which is done now every year, ought not to continue, and to continue in the practice of that assembly which is fond, and is justified after all, in taking on itself the august appellation of the "Mother of Parliaments." The fine old mother should, without loss of time, require a good report on all estimates of expenditure before she permits the substance hardly won by her sons to be expended. It should be a case of "look, before you leap." A better control of estimates would do much to vindicate the true place of the Commons as representatives of the people.

The present crisis in England brings this question of controlling expenditure to the forefront. The Lords have proposed; the Commons should see that they will dispose. The Lloyd George Budget of 1909 is, as I write, passing the second time

through the House of Commons, though the refusal of a budget by the Lords, an unrepresentative chamber, was the culmination of a contest for power and influence. That rejection was a symbol of opposition to popular government. Under the forms of parliamentary government there was danger lest the rights immemorial of the people should be denied, and snatched away. For years it has been apparent that influences were at work deliberately to annul the practical consequences of the extensions of the franchise during the nineteenth century. The British nation at times is disposed "to rest and be thankful," as though common liberties grew and flourished without cultivation and attention. Until the movement to stifle popular government by means of popular institutions ventured to use the Lords to reject a budget voted by the Commons, it was difficult to fix the country's attention on the drift of affairs. There is reason for saying that there is an awakening, which may yet be found rough and rude by some. It is recognized that taxation and all the finance of government is intimately entwined with the maintenance of popular institutions and the people's welfare. That being so, the manner in which the House of Commons, the representative of the people, discharges its duty of regulating the expenditure of the country, becomes interesting in a degree which cannot be exaggerated. Then, too, it is plain that if the House of Commons, by means of the purse chiefly, is still more to be acknowledged as the chief power in the State, does it not become that august assembly to see that the method in which this characteristic duty is discharged shall be the best, the strongest, the most effective which can be devised?

The people of the United States of North America, devoted to self-government with a passion which time does not make stale, will watch with great interest the effort of another country in renewing its strength, and in making government an instrument of popular aspiration, the executor of a free people's will.

W. M. J. WILLIAMS.

National Liberal Club, London.



## CAPITALIZATION AND MARKET VALUE.

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### CONTENTS.

The Arithmetical Doctrine of Capitalization stated, p. 132; difficulties in applying it, p. 133; the adjustment of market price is the same for production as for consumption goods, p. 136; demand not homogeneous, p. 137; capitalizing rates of interest not homogeneous, p. 139; the prevailing doctrine implies a social organism which is inconsistent with individual differences, p. 141.

AS an arithmetical formulation it may be safely said that the present worth of any future income is that number of dollars which put at interest at the assumed rate will give the same amount. To find, therefore, the present worth of a sum of money definite in amount, free from hazard of non-payment, and due at a fixed time, is not difficult, provided only that a rate of interest is assumed for the case.

But have we not to do here solely with arithmetical processes rather than with economic doctrines—precisely as when we assume a certain rate of multiplication for sheep or mice, and set ourselves to compute the present stock adequate to promise a certain future total in a given time, we may regard ourselves as steadfast on the high table-lands of mathematical truth untempted to the lower levels of zoölogical or biological science?

But as our formulations become more and more questionable, they are presumably on the way toward a more distinctly scientific character and standing. Thus we learn from economic theory that the value of any instrument of production is derived from its prospective incomes, through the discount of these to a present worth under a given rate of interest; but we are at the same time assured that these earning powers themselves determine their own rate of discount. And we are further told, on like authority, that the values of productive instruments are determined by their costs of production instead of by the capitalization process.

But if we are content to regard this capitalization doctrine as acceptable and to follow it in perfect trust, how far is it likely to lead us? Whether the productive powers of land have themselves any part in fixing the interest rate upon which the capitalized value depends, we may never be indubitably told; but we are assured that knowing the rent of the land, we arrive at the value by discounting the series of rents into one total of present worth under a market rate of interest somewhere and somehow fixed.

The determination of the total present worth of any kind of annuity, temporary or permanent, is typically of this sort both in principle and in process; and all durable sources of income are, *eo nomine*, annuity bearers for the term of their service; all, therefore, receive their market value through the discount process. And all durable consumption goods are likewise, for the purposes of this problem, income-rendering, since they afford a succession of valued services. As with other incomes, so with these. Future revenues suffer, as rendered over into a present estimation, by the very fact of this remoteness. Thus the discount rate presents itself as fundamental to the determination of the value of every item of durable wealth. Similarly for wages. Wages are a derivative or a distributive share out of a value product; they must then suffer a discount in the degree that the wage precedes in time the marketing of the product. The capitalization doctrine means, therefore, that the interest rate takes some part, more or less controlling, in the determination of practically all market values.

All this seems to say that for all goods, whether of the production or of the consumption sort, the rate of interest is fundamental to the process of valuation, if the services are in any degree remote in time. Precisely how wide an area the psychological present covers—how remote, that is, an item of service or income must be in order that it suffer in present value by reason of this fact of remoteness—may be difficult of definite formulation; but this in nowise disturbs the proposition that remoteness in time is everywhere an influence to lower present value.



Nor is this the full reach and meaning of the capitalization doctrine as we seem to meet it: if certain issues of stock appear to promise an increase in dividends, this larger promise is forthwith reflected in present market quotations. Likewise, if taxation cuts into net earnings or net rentals or net interest, there follows a proportionate fall in the market price of stocks or lands or bonds. And so, in general, if the market rate of interest falls, the prices of all durable sources of money income or of valuable utility forthwith advance to correspond. Thus the market rate of interest stands as the master key for the unlocking of most problems of market valuation.

Surely this a simplifying of things even up to the point of bewilderment. Can all these things be indeed after these ways? For notice again that, after all, this capitalization doctrine rests on the assumption of a fixed and definite annual rental and of a fixed and definite market rate of interest. And yet it is hardly credible that before there was an established medium of exchange, or an organized credit system, or any considerable credit of any kind, or any market rate of interest, there were no exchange relations upon instruments of production and upon durable consumption goods. Nor can it be true that these rentals, *in the sense of established market values*, upon the temporary use of instruments and of goods, must have established themselves before any market value became possible for the goods themselves. Were each man owner and user of his own houses and of his own land and of his own cattle, would market values now be impossible of establishment?

But there are further difficulties: Those rents awaiting capitalization are themselves distributive shares out of the joint product of the various factors of production. The product, in turn, may itself be a long-time instrumental good or a long-time consumption good; as such it assumes an existing rate of interest in order that it may take on a present market value. But otherwise than with a present market value there is nothing to distribute. Moreover, we now recall that those rents, so derived from the value product, themselves determine the rate of interest by virtue of which a value product comes to exist. We seem then to be driven to the conclusion that an interest rate exists

independently of the productive process, and independently of the rents derivative from it: Otherwise how could the product receive a valuation? And without a valuation what was there to distribute? It thus appears that this attempt to deduce interest rates from rents hides its own undoing; the productivity theory of interest ushers itself out of the door. Political economy appears to need an interest rate ready made to its hand: all our analyses begin and end in this interest assumption: on any other terms our case will not get on.

But if fear should arise that upon this showing the interest rate may be in danger of breakdown from overwork, this anxiety may be promptly dismissed. On this showing there can never be any interest rate at all. For there are other difficulties. Since there can be no value product without a preëxisting interest rate, it forthwith becomes impossible to have an original value contribution upon which to compute a value surplus. And precisely as there can be no value product without a preëxisting interest rate, so there can be no preëxisting rate without a preëxisting value product. The entire adventure goes into bankruptcy—shutters down, lights out, doors locked.

But one at least of our difficulties may be easily set aside. There is in fact no fundamental contradiction in explaining the value of a production good either from its past, its cost, or from its future, its earnings. In any view of the case, cost can bear upon value only as it bears upon the supply side of the value equation. Lower costs imply an increase in the supply of the production good, forthwith an increase in the consumable products, thereupon a fall in their price, and therefrom a lower rent to the production good. Thus an increase in the supply of the production good lowers the rent of it. It has now become logically open to appeal to the capitalization of this rent to arrive at the market value of the productive instrument. There is here no denial of the determination of value by cost; cost still stands as ultimately the determinant of value—the demand being assumed—since by regulating supply the cost determines the rent. Obviously, however, the fundamental difficulty in the capitalization problem is not here; it lies rather in



the problem whether for arriving at a market value there need be either a market rent or a market rate of interest.

But surely there is some soul of truth at the heart of this capitalization doctrine. If grapes could really be gathered of thorns or figs of thistles, thorns and thistles would then be something other than thorns and thistles. Not earning dividends, stocks likewise would lose their value. It is the putative future wool from the sheep or the forecasted hay from the meadow that gives to the present possession significance, motivates the price-sacrificing disposition of purchasers, and thus lies back of the present market value. And—at least in some large general way—it is true that, as the wool turns out to be more or better as a value item, or the crop more generous, the market value is greater for the product-bearer. And somehow, also—whether as ultimate cause or not—market values do rise, even though the annual return is unchanged, if only interest rates are falling. Nor need it greatly matter for the present purpose that no particular one of all the various rates of interest—the bank rate, the call rate, the government rate, the savings bank rate, the average rate—seems to have any especial claim to be regarded as peculiarly and exclusively the capitalizing rate.

But it is after all clear that the process of market adjustment of price is one and the same process for all goods appearing upon the market. It is not true that the method is one method for the farm or the traction engine or the draft horse, and another, and a fundamentally different method, for a bushel of wheat or a pound of candy. In the case of a stock of consumption goods of substantially similar quality, the legendary hats for example, the conventional analysis has become wearisomely familiar. We all know that in cases of this sort some men will offer more and others less, and that with each different man the price-paying disposition falls with each change in his achieved or contemplated purchases. As the summation of all these individual price-demand curves, we have an aggregate demand schedule—the curve of market demand. The price at which the whole demand is adjusted as against the whole supply

coincides with the price-paying disposition of few of the purchasers, and need not precisely coincide with any. There are buyers' surpluses, great or smaller, even sometimes for the weakest purchaser.

This is all as simple as it is tedious. But because there is only one process for both consumption goods and production goods, there are some things implied in this analysis that demand clear and definite acceptance. There is here no vaguest hint that any social organism is mysteriously and spookily present; the fact is simply that they are just different men trying competitively to buy things from other men who are trying competitively to sell things. And while no doubt is suggested that each buyer is trying to get something useful to himself, there is no slightest intimation of any large general social utility in the background. In point of fact, no one man's utility is homogeneous with that of any other man—even with two men disposed to pay the same price for the final unit. There is neither homogeneity nor equality of utility implied; one man may be a rich man, the other poor—or both may be equally poor but unequally hungry. And even could equal paying dispositions infer either equality or homogeneity of service, the paying dispositions upon the market are in fact not equal; it is precisely for the purpose of expressing and asserting this fact of inequality that we construct our demand schedules or curves. A marginal price offer—if accurately marginal—expresses merely the equality of service between the thing in prospect and some other thing to be had for the same money. Marginality, that is to say, is an attitude of indifference between two competing applications of purchasing power—an equality ratio between utilities, without suggestion as to the size of either, and with still less suggestion of homogeneity with the utilities of anyone else.

And here is the important application for our present problem: Precisely as there is no homogeneity of service suggested in the demand curve for wheat or for hats, and as even an equality of price-paying disposition is expressly denied, just so there is neither homogeneity of significance nor equality of earning power implied in the demands of various farmers for plows.



The one thing common to all these different offers is that they are offers of money; and all of these offers of money differ in the size of the offer. The market outcome that results attributes, therefore, no specific productive power to plows, but is merely the attaching to them of a market value—a market value based no doubt upon the fact that plows are capable of being used by these different men as an aid to each one in his process of production—but as an aid in differing degrees. It is precisely because the entrepreneurs are different that there must be as many different productivenesses of plows as there are different men. There is no one real and ultimate and specific productiveness. The very differences in price-paying disposition which the demand schedule presents should alone suffice to prove this. Market price is not a statement of what the productiveness specifically is, but expresses only the market value of the productivity. It follows, therefore, that there is no one income-earning power for any one productive instrument or grade or kind of instrument, which definite income-earning power may thereupon be capitalized into a market value. Such ascription of productivity as takes place is a purely personal appraisal, and this appraisal is a process preceding the price offer of each individual bidder and leading up to it. The market price which results is, therefore, merely the outcome of a process of adjustment between the total supply of goods on the one side and all the different price offers on the other side. Each and all of these various price offers are influences in the case. The market price is merely the equilibrium point, and is not a pronouncement in the favor of the correctness of any one out of all these various appraisals. Nor is it, in any sense, the declaration of any social or general or specific productivity for plows in general or for any item of the genus plow.

Even more conclusive is this analysis as it applies to cases of goods not present in stocks. That price which must be paid by the successful bidder for any particular farm is the price necessary to exclude the strongest competing bidder—if indeed there is a competitor. If there is none, the lower limit upon the price is found in the reservation price of the seller. Thus

the actual price is commonly appreciably lower than the possible upper limit. The margin for higgling, the interval for possible traders' surpluses, is a passably wide one in the ordinary case. The maximum bid of the buyer is doubtless based upon the productivity relation of the farm to him. But there is nothing here to suggest the derivation of his bid from the process of capitalizing some *market* rental or *market* appraisal of this productivity. The only thing that the market specifically declares is the market price of the farm. There need be no *market* rate of rental nor is there any chain of causal sequence here in which any *market* rental can form a link.

Nor even where the thing to be marketed is a fixed and definite annuity—a government bond, for example, or a ground rent—does a different line of reasoning apply. Different bidders place different personal estimates upon the degree of hazard, and vary in their degree of reluctance to assume the hazard, and vary as well in their financial ability to carry the hazard. Translated into a personal price appraisal, the different bids must vary as the bidders are various. And even where an investment may be taken to be free from all necessity of supervision or care, and to be clear of all taint of uncertainty, it must remain true that different investors attach all grades of importance to this question of safety. Guardians and trustees bid par of 2 per cent. securities. Some investments carry with them variously estimated advantages—for example, the political leverage and social prestige of land—and must, therefore, suffer in their rate of purely monetary returns.

Enough has perhaps been said to the point that market rents do not get capitalized upon the market, but rather that personal rents get capitalized into a personal price offer. It remains to show the parallel truth that no one of all the market rates of interest is the capitalizing rate. Nor is there any one market rate having direct reference to the case. Those interest rates that bear upon market price must be those rates which are behind the different price offers that together make up the demand schedule. These rates are not one but many; they are the purely personal rates of the different men who are deciding



what present offers they shall respectively make. Thus the different rates are as many as are the different men. What any man's funds are worth to him in other lines of activity must commonly determine the rate upon the basis of which he can afford to bid for any given item of investment. If, in view of his limited credit and of the needs of his business, it will cost him 10 per cent. to direct his resources toward the purchase of a traction engine, then 10 per cent. must be his discount rate. The rate for the sort of man he is, in view of his line of business and of his peculiar circumstances—that is, the rate at which he must borrow upon the market if he can and does borrow—will be one out of the many influences concurring to determine his personal interest rate. Under this purely personal rate he will discount into a personal price offer the particular future rental or earning advantages which the good in question appears to promise to him. He may well decide not to invest \$1,000 in an improvement which would earn him a net annual advantage of \$200, and it is not decisive, or even necessarily relevant, that money can be borrowed at 5 per cent. by other men. Another man may see in this improvement only one-half as great an annual service to him, and may nevertheless wisely undertake the outlay; this will depend upon what his funds are worth to him.

It is clear, then, that each individual man must have his own rental estimates and his own private rate of interest before he has before him the data for arriving at his own offer price. Market values are not accurately to be stated as derived from future *market* rentals discounted into a present worth under a *market* rate of interest.

Durable consumption goods offer, however, the more telling illustrations of the correct principle. A piano may offer not only a far greater monthly service to the less wealthy man than to the more wealthy, but a service for which the less wealthy man would consent to pay the greater monthly charge; but in determining which will buy and which will go without the piano, or which would prevail in competitive bidding, the lower personal discount rate of the rich man may well overbalance the higher rents to the poor man. The latter may, for example,

severely need to repair or to enlarge his house. The same analysis explains why the well-to-do choose to keep themselves warm in well-constructed buildings with expensive heating plants, while the poor accept a larger expenditure of coal to be consumed in defective heating appliances.

Were it to the present purpose, the tenability of the notion of specific value productivity could well be subjected to further scrutiny. It would then appear that the outlay which any entrepreneur can afford to make, as the annual hire for any particular instrument good or as the total purchase price of the good, is not the money equivalent to him of the specific productivity of the instrument, but merely the money equivalent of the added income which his present productive equipment and this addition will together achieve, over and above what could be achieved without the addition. This additional income is due in part to the independent productivity—if there be any—which the new fact bears in its own right, in part to its added productivity in its new setting, in part, also, to the added productivity which the old facts take on in their new association and relation. So far as the productivity is a matter of the interrelations of the different parts of the entrepreneur complex—the entrepreneur himself being a part thereof—and a matter of the organization of the complex, there is a productivity which defies any attempt at distribution. This, however, is not at all to deny that the entrepreneur knows how much he would if necessary pay as a maximum in order to command the added item of equipment.

The truth is that the prevailing capitalization doctrine as an explanation of the value of durable goods—like the old pain cost explanation of value and like the new marginal utility explanation—has no other logical basis than the assumption that there exists a social organism, and is intelligible only when interpreted as part and parcel of the social organism theory. Much indeed that is actually not tenable in economic analysis would be tenable if only this doctrine of the social organism could be made to hold. On these terms a social valuation could



take place; so the doctrine of specific productivity might possibly command acceptance, and to the extent that we are able to peer into the mystery, we may well believe that there would be a social perspective between present and future goods, and a social comparison between present purchasing power and future purchasing power. And thereupon, by the aid of its social rate of discount, society might proceed to discount the future specific productivities into present market prices.

And accomplishing thus much, the social organism doctrine would have a long series of achievements to its credit. But even so, the attendant perplexities might more than overbalance the account, for what should we do with the new worries prompt to hag-ride us? For admit it to be true that production is not individual but social, and market value social; it nevertheless stands firm that consumption, and the distribution upon which consumption depends, are individual. But these incomes of rent, interest, wages and profits, as individual and distributed shares to their recipients, are at the same time costs of production to the entrepreneur. As costs they may in some sort rank as determinants of that very value which we seem to have agreed to regard as purely social. And is the entrepreneur to be conceived as a social entrepreneur or as an individual entrepreneur?—and is profit a social or an individual profit? Does it matter that part of this profit is unnecessary, is an excess above the social cost? Or are we somehow to cancel all these individual facts and emerge with social wages solely, and social rents, and social time discounts, and finally—as surplus over social cost—a social unnecessary profit?

At all events, as long as we have—and recognize—separate and individual needs, separate demands, and separate biddings, and separate acceptings, we shall be recurrently forced to trespass upon the unity of the social organism. For some purposes, at any rate, the constituent cells will have to be taken as separate individuals. And if the purchasers' bids are individual, so also must be the motives and the computations behind the bids. But consistently with all this, there can be no social marginal utility by virtue of which market value can be explained or into which it can be resolved. The marginal bid expresses

merely an equality of utility between competing claims upon the bidders' resources—without any slightest suggestion as to the absolute size of these utilities, or as to the utilities to any other person or persons.

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NOTE:—In the errors under condemnation the present writer acknowledges his full and fair share of responsibility—not indeed as sole or as chief sinner, but as one among a goodly company. The social organism cult has beguiled many an unsuspecting wayfarer from his path: the trail of this serpent is to be found in nearly all of our gardens. The present article is, indeed, mostly in the nature of a confession of error and a recantation. Nor is this penitential exercise purely a self-imposed discipline; for the most part it has been imposed upon the writer through the searching criticism of one of his students. It thus happens that another statement of the same line of argument—by the real author of it—may be found in the March, 1910, issue of the *Journal of Political Economy*—"The Capitalization Process," by D. R. Scott.



## UNIONISM AND THE COURTS.

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### CONTENTS.

Difficult situation of courts called upon to decide cases affecting trade-unions, p. 144; 1, laws prohibiting discrimination against trade unionists, reasons for tendency of State courts to declare them invalid, p. 145; same tendency shown by the Supreme Court of the United States, p. 147; analysis of dissenting opinions by Justice Bartlett, p. 149; Justice McKenna, p. 150; and Justice Holmes, p. 151; 2, validity of contracts for the closed shop, analysis of decisions condemning and sustaining them, p. 152; 3, possible modifications in the prevailing view of the courts in the interest of real freedom of contract, p. 155; in the case of public service corporations, p. 157; in the case of "wholesale employment," p. 157.

ONE of the most interesting as well as one of the most important developments of trade union policy during the past few years has been the increased attention paid to the non-union man. The policy itself is, of course, not a new one. The man outside of the organization has always been in a position to command the attention of the union man. Yet this attention has been concentrated and heightened into anxiety by a very positive danger. This danger is that the "scab" may become a serious obstacle to the accomplishment of the purposes of the union.

Rivalry with an employer cannot be well controlled so long as the employer has at hand a supply of men who can step in to take the places of strikers. Not only in time of strike but practically at all times is the possible supply of the strike breakers a menace to a militant union. The antagonism that naturally exists between employers and employees is the background for the desire on the part of each to gain every possible advantage over the other, in the realization that an outbreak may come at any time.

To place themselves and their followers at an advantage at every possible point, labor leaders have insisted upon a very definite policy against non-union men. They have used legis-

lation where it could be secured and organized strength where it was advantageous.

These several plans have an interest beyond that of their success or failure, or even beyond their effect on the industries that are concerned. They have led to litigation and thus the courts have been obliged to deal with the situation. The result of this has been to place the courts in a difficult if not an embarrassing position. It has made necessary a decision on questions of industrial ethics applicable to industrial conditions so new that there has not yet been time for this new phase of ethics to evolve. It has been necessary for the judges, therefore, to express themselves with caution. It is with the attitude of the courts toward these policies that we are now particularly concerned.

The effort to secure legislative aid found expression in several laws passed by both State and federal legislatures. These laws were alike in general principle. They made it a misdemeanor for an employer to discharge an employee because he was, or was about to become, a member of a labor union. In one instance a law was passed forbidding an employer to compel an employee to agree not to join a labor union as a condition of employment. Such laws were passed and came before the courts in several States, the opinions being important ones in Missouri, (*State v. Julow*, 1895, 31 S. W., 781); Illinois, (*Gillespie v. People*, 1900, 58 N. E., 1007); Wisconsin, (*State v. Kreutzberg*, 1902, 90 N. W., 1098); New York, (*People v. Marcus*, 1906, 77 N. E., 1073); United States, (*Adair v. U. S.*, 1908, 208 U. S., 161).

The line of argument in these several opinions is so similar that it will not be necessary to the understanding of them that extracts be quoted from all. All of the opinions except that of the New York court deal with the law to prevent the discharge of men solely because they belong to labor unions.

In *State v. Julow*, the first of this series of decisions, the court found two objections. The first was constitutional, based on the guaranty of life, liberty and property. These terms "are representative terms, and cover every right to which a



member of the body politic is entitled under the law." Necessary to these rights are "those of acquiring property by labor, by contract, and also of terminating that contract at pleasure, being liable, however, civilly for any unwarranted termination." "The law under review declares that to be a crime which consists alone in the exercise of a constitutional right, to wit, that of terminating a contract,—one of the essential attributes of property, indeed, property itself, under preceding definitions." The fact charged "is not a crime, and will not be a crime so long as constitutional guaranties and constitutional prohibitions are respected and enforced." "We deny the power of the legislature to do this, to brand as an offense that which the constitution designates and declares to be a right, and therefore an innocent act."

The second objection lies in the fact that the law "does not relate to persons or things as a class." It is therefore a special law, in that a non-unionist might be discharged "without ceremony, without let or hindrance," at the desire of the employer, while a unionist would be protected by the law.

By far the most elaborate opinion was written by the Wisconsin court. In this opinion the same grounds of objection are urged,—the conflict between the law and the constitutional guaranties. Implied in the guaranties of the constitution is freedom of contract. The labor contract is but a special form and subject to all the privileges of other forms of contract. The opinion then takes up another line of objection in the following words:

"Free will in making private contracts, and even in greater degree in refusing to make them, is one of the most important and sacred of the individual rights intended to be protected. That the present act curtails it directly, seriously, and prejudicially, cannot be doubted. The success in life of the employer depends on the efficiency, fidelity, and loyalty of his employees. Without enlarging upon or debating the relative advantages or disadvantages of the labor union, either to its members or to the community at large, it is axiomatic that an employer cannot have undivided fidelity, loyalty, and devotion to his interests from an employee who has given to an association right to control his conduct. He may by its decisions be required to limit the amount of his daily product. He may be restrained from teaching his art to others. He may be forbidden to work in association with other men whose service the employer desires. He may not be at liberty to work with such machines or upon such materials or products as the employer deems essential to his success. In all these respects he may be disabled from the

full degree of usefulness attributable to the same abilities in another who had not yielded up to an association any right to restrain his freedom of will and exertion in his employer's behalf according to the latter's wishes. Such considerations an employer has a right to deem valid reasons for preferring not to jeopardize his success by employing members of organizations. A man who has by agreement or otherwise shackled any of his faculties—even his freedom of will—may well be considered less useful or less desirable by some employers than if free and untrammelled. Whether the workman can find in his membership in such organizations advantages and compensations to offset his lessened desirability in the industrial market is a question each must decide for himself. His right to freedom in so doing is of the same grade and sacredness as that of the employer to consent or refuse to employ him according to the decision he makes. We must not forget that our government is founded on the idea of equality of all individuals before the law. Such restraints as may be placed on one may be placed on another. If the liberty of the employer to contract or refuse to contract may be denied, so may that of the employee. In answering the question now before us, we may not forget the possibility of being called on to answer whether the legislature may make a criminal of the employee who quits, for example, because his employer joins a blacklisting association; because nonunion men or members of some other union are employed, or nonunion or forbidden machines or materials are used; because of an obnoxious foreman; because excessive hours of work are required; because compelled to trade at employer's store or board at his boarding house; or because of any other fact or conduct now considered entirely adequate reason for refusing or leaving a particular service. It must not be forgotten, if, as counsel for the state argues, the laborer is too weak to meet the employer on equal terms in the field of contract, that he will be far more subject to the latter's control and oppression in the field of politics, and that laws of the above character will surely come, if within the proper province of the legislature, unless, as we have faith to believe, the character and the individuality of the wage earners of the country are sufficient to maintain their independence—both contractual and political—in the field of equal rights under the law, and of full liberty to each to sell and buy labor to and from whom he will."

"That the act in question invades the liberty of the employer in an extreme degree, and in a respect entitled to be held sacred, except for the most cogent and urgent countervailing considerations, we have pointed out. Hardly any of the personal civil rights is higher than that of free will in forming and continuing the relation of master and servant. If that may be denied by law, the result is legalized thralldom, not liberty,—certainly not to the laboring men of the country. This aspect of the subject is too clear to warrant further discussion." The law "has, then, taken from one his liberty and property, not for a public purpose, but for the benefit of other individuals, which is but robbery under the forms of law."

The attitude of the United States supreme court was much the same as that of the State courts. The case came up to the supreme court as a test case between two conflicting opinions by lower federal courts.



United States v. Adair (152 Fed. Rep., 737) had been decided in favor of the constitutionality of the statute by the district court for the Eastern District of Kentucky. United States v. Scott (148 Fed. Rep., 431), the year before, had been decided against the constitutionality of the law by the circuit court of the Western District of the same State. The decision of the latter case was without a comprehensive opinion. The supreme court accepted its principle, however, rather than that of U. S. v. Adair.

The opinion is a long one, as it deals with a question that is "admittedly one of importance," and one that "has been examined with care and deliberation."

"It cannot be, we repeat, that an employer is under any legal obligation, against his will, to retain an employee in his personal service any more than an employee can be compelled, against his will, to remain in the personal service of another. . . . Congress could not, consistently with the Fifth Amendment, make it a crime against the United States to discharge the employee because of his being a member of a labor organization."

"One who engages in the service of an interstate carrier will, it must be assumed, faithfully perform his duty, whether he be a member or not a member of a labor organization. His fitness for the position in which he labors and his diligence in the discharge of his duties cannot, in law or sound reason, depend in any degree upon his being or not being a member of a labor organization. It cannot be assumed that his fitness is assured, or his diligence increased, by such membership, or that he is less fit or less diligent because of his not being a member of such an organization. It is the employee as a man, and not as a member of a labor organization, who labors in the service of an interstate carrier." "Looking alone at the words of the statute for the purpose of ascertaining its scope and effect, and of determining its validity, we hold that there is no such connection between interstate commerce and membership in a labor organization as to authorize Congress to make it a crime against the United States for an agent of an interstate carrier to discharge an employee because of such membership on his part. If such a power exists in Congress it is difficult to perceive why it might not, by absolute regulation, require interstate carriers, under penalties, to employ, in the conduct of its interstate business, *only* members of labor organizations, or *only* those who are *not* members of such organizations,—a power which could not be recognized as existing under the Constitution of the United States."

Concerning the law forbidding an employer to require, as a condition of employment, that a workman shall agree not to join a union but a word need be added. The New York court (People v. Marcus) based its opinion upon its utterances in former cases in which it upheld freedom of contract in relation

to the purchase and sale of labor. (*National Protective Association v. Cumming* and *Jacobs v. Cohn*.) Its conclusion is that "that freedom to contract which entitles an employer to make by agreement his place of business wholly within the control of a labor union entitles him, if he so desires, to require of his employees that they be wholly independent of any labor union."

These decisions with their opinions leave no doubt as to what the law is, so far as constitutionality is concerned. The restriction which such legislation seeks to place upon the employer in favor of the workman is contrary to the individual liberty of the citizen to enjoy his property rights. This centers in the right to contract freely with any one who is willing to enter into the contract. The case is not one that by the exercise of the police power may be brought within the constitutional field of limitation upon the right to contract. There is no reason in public policy that will justify such legislation as a restriction upon the right to contract.

The prevalence of this view may be indicated by the fact that thirty-two judges have heard the arguments in these several cases, and all but three have held to the opinion that such laws are in violation of a constitutional right. Two of these three are judges of the United States supreme court. Three dissenting opinions have been written, and the very fact that there are but three makes them of unusual interest. Further interest is attached to two of them from the fact that they were written by Mr. Justice Holmes and Mr. Justice McKenna.

The first of these three dissenting opinions was written by Mr. Justice Bartlett of the New York court of appeals, in the case of *People v. Marcus*. Its line of reasoning is shown in the following extract:

"The freedom of contract should be untrammelled. A person desiring employment ought not to be required to abstain from joining any labor organization, nor should he be compelled to join a labor organization. The statute should have covered both cases. I regard this legislation as a step in the right direction, although it was evidently drawn in the interest of labor organizations and without regard to securing absolute freedom of contract. The employer is to be protected and the employed as well. I trust the day is not far distant when to every working man will be open all the avenues of



employment, whether he belongs to labor unions or other organizations, or stands alone upon his individual right to work for such a wage as seems to him just. This statute is not, in my opinion, unconstitutional, but is to be regarded as a step in the direction dictated by every consideration of public policy."

Justices McKenna and Holmes wrote their dissenting opinions on the same case, *Adair v. U. S.* Justice McKenna enters into a careful analysis of the provisions of the entire law of which the contested section was a part and insists that the section must be considered with reference to the other sections. The purpose of the statute as a whole is to prevent or settle disputes between carriers and their employees. In the light of this purpose the section in question gets its justification. Liberty is not entirely free from restraints, even under the Fifth Amendment. Some restrictions are justifiable. The question then is whether the section in dispute "has relation to the purpose which induced the act, and which it was enacted to accomplish, and whether such purpose is in aid of interstate commerce, and not a mere restriction upon the liberty of carriers to employ whom they please or to have business relations with whom they please." The purpose of the act is to be approved, and in its efforts to attain this purpose "the congressional judgment of means should not be brought under a rigid limitation." If labor associations are to be commended, Congress certainly may recognize their existence and their power "as conditions to be counted with in framing its legislation." The justification of Congress in its efforts to accomplish its purpose is evident in the events of 1894. The law of 1888 "did not recognize labor associations or distinguish between the members of such associations and the other employees of carriers. It failed in its purpose, whether from defect in its provisions or other cause, we may only conjecture. At any rate it did not avert the strike of 1894. Investigation followed, and, as a result of it, the act of 1898 was finally passed. Presumably its provisions and remedy were addressed to the mischief which the act of 1888 failed to reach or avert. It was the judgment of Congress that the scheme of arbitration might be helped by engaging in it the labor associations." The final conclusion of the opinion is that if the

disputed section is to be stricken from the law, the law is made ineffective in accomplishing its purpose.

The opinion of Justice Holmes is as follows:

"As we all know, there are special labor unions of men engaged in the service of carriers. These unions exercise a direct influence upon the employment of labor in that business, upon the terms of such employment, and upon the business itself. Their very existence is directed specifically to the business, and their connection with it is, at least, as intimate and important as that of safety couplers, and, I should think, as the liability of master to servant,—matters which, it is admitted, Congress might regulate, so far as they concern commerce among the States. I suppose that it hardly would be denied that some of the relations of railroads with unions of railroad employees are closely enough connected with commerce to justify legislation by Congress. If so, legislation to prevent the exclusion of such unions from employment is sufficiently near.

"The ground on which this particular law is held bad is not so much that it deals with matters remote from commerce among the States, as that it interferes with the paramount individual rights secured by the Fifth Amendment. The section is, in substance, a very limited interference with freedom of contract, no more. It does not require the carriers to employ anyone. It does not forbid them to refuse to employ anyone, for any reason they deem good, even where the notion of a choice of persons is a fiction and wholesale employment is necessary upon general principles that it might be proper to control. The section simply prohibits the more powerful party to exact certain undertakings, or to threaten dismissal or unjustly discriminate on certain grounds against those already employed. I hardly can suppose that the grounds on which a contract lawfully may be made to end are less open to regulation than other terms. So I turn to the general question whether the employment can be regulated at all. I confess that I think that the right to make contracts at will that has been derived from the word 'liberty' in the Amendments has been stretched to its extreme by the decisions; but they agree that sometimes the right may be restrained. Where there is, or generally is believed to be, an important ground of public policy for restraint, the Constitution does not forbid it, whether this court agrees or disagrees with the policy pursued. It cannot be doubted that to prevent strikes, and, so far as possible, to foster its scheme of arbitration, might be deemed by Congress an important point of policy, and I think it impossible to say that Congress might not reasonably think that the provision in question would help a great deal to carry its policy along. But suppose the only effect really were to tend to bring about the complete unionizing of such railroad laborers as Congress can deal with, I think that object alone would justify the act. I quite agree that the question what and how much good labor unions do, is one on which intelligent people may differ; I think that laboring men sometimes attribute to them advantages, as many attribute to combinations of capital disadvantages, that really are due to economic conditions of a far wider and deeper kind; but I could not pronounce it unwarranted if Congress should decide that to foster a strong union was for the best interest, not only of the men, but of the railroads and the country at large."



While these two dissenting opinions are of course far from determining the law, they nevertheless indicate a possible development. It must necessarily be some time before the minority view will be accepted by the majority, if, indeed, it ever is accepted.

One further indication of variety of opinion is found in *Berry v. Donovan*. In that opinion Mr. Chief Justice Knowlton made the following statement: "We have long had a statute forbidding the coercion or compulsion by any person of any other 'person into a written or verbal agreement not to join or become a member of a labor organization as a condition of his securing employment or continuing in the employment of such person.' The same principle would justify a prohibition of the coercion or compulsion of a person into a written or verbal agreement to join such an organization as a condition of his securing employment, or continuing in the employment of another person."

Turning away from legislation as a means of securing protection for union men, we find the leaders availing themselves of the right upon which the courts in the above cases have insisted: the right to contract. Its application is in the contract for the union or closed shop. Much may be said both for and against this policy on economic grounds. Our interest, however, is with the attitude of the courts, and there are cases in which some interesting opinions have been written on the subject.

*Berry v. Donovan* (Mass., 74 N. E., 603) was a case in which a discharged employee brought suit for damages on the ground that his discharge had been caused by an agreement between his employer and a union, providing that the employer would not retain in his employ any one that was objectionable to the members of the union. Damages were awarded by the court on the ground that the discharged workman had been employed nearly four years and was discharged as a result of a complaint under the agreement. The opinion is a long one and does not seem so strong as some other opinions on the same subject. It takes the general ground that "under correct rules of law, and with a proper regard for the rights of individuals,

labor unions cannot be permitted to drive men out of employment because they choose to work independently." The opinion closes with the following guarded statement: "How far the principles which we adopt would apply, under different conceivable forms of contract, to an interference with a workman, not engaged, but seeking employment, or to different methods of boycotting, we have no occasion in this case to decide."

In *Jacobs v. Cohen* (N. Y., 76 N. E., 5) the opinion of the court was accompanied by a vigorous dissenting opinion. The contract for a closed shop was one that included many details and was in effect a complete unionizing of the shop. The prevailing opinion was brief. It held that the contract was not unlawful. It had been entered into voluntarily, and the parties were free to make the agreement. "That, incidentally, it might result in the discharge of some of those employed, for failure to come into affiliation with their fellow workmen's organization, or that it might prevent others from being engaged upon the work, is neither something of which the employers may complain, nor something with which public policy is concerned."

The dissenting opinion, written by Mr. Justice Vann, is interesting from beginning to end. As a result of the agreement, the opinion argues, the labor department was under the control of the union. Thus both employer and employed abrogated their own rights. "This was a form of slavery, even if voluntarily submitted to; for whoever controls the means by which a man lives controls the man himself. Both the proprietors and the workmen seem to have walked under the yoke of the union without a protest. \* \* \* The labor of the employees belonged to themselves, and they had a right to sell it to whom they chose and on such conditions as were mutually satisfactory. The business belonged to the defendants, and they had the right to employ any man who was willing to work for them; but by this agreement an outsider intervened, and compelled those who owned the business and those who did the work to submit to its direction. \* \* \* The manifest purpose of the contract was to prevent competition and create a monopoly of labor. A combination of capital, or labor, or as in this case of both, to prevent the free pursuit of any lawful business, trade,



or occupation, is forbidden both by statute and the common law."

In *O'Brien v. People* (75 N. E., 108) the Illinois supreme court held that a strike to enforce an employer to sign a closed shop agreement was properly enjoined. The union agents were seeking to obtain the signing of a contract by threats. "A contract under duress is voidable, and duress is present where a party is constrained, under circumstances which deprive him of the exercise of free will."

*Reynolds v. Davis* (84 N. E., 457) is another Massachusetts case and one of very recent date (1908). The employers had been operating under a verbal understanding which was in effect a closed shop agreement. They decided to abandon that policy and in furtherance of the new purpose posted a set of rules which established the open shop. The result was a strike and an appeal to the court. The majority opinion of the court was based on the general rule that in Massachusetts "the legality of a combination not to work for an employer, that is to say, of a strike, depends (in case the strikers are not under contract to work for him) upon the purpose for which the combination is formed—the purpose for which the employees strike." That the purpose was not legally justifiable is found by the majority of the court in certain rules of the union. These rules the union sought to enforce upon the employer. "The strike in question was a combination for the purpose of making the trades council, composed of delegates from the unions of which the individual defendants are members, the arbiter of all questions between individual employees and their employers. \* \* \* We do not mean to say that a labor union cannot combine to support a committee to take up individual grievances in behalf of the several members. What we now decide to be illegal is a combination that such grievances (that is to say, grievances between an individual member of a union and his employer which are not common to the union members as a class) shall be decided by the employees and that decision enforced by a strike on the part of all." Chief Justice Knowlton wrote a dissenting opinion, stating that while he agreed with the final disposition of the case, the opinion seemed to rest on erroneous grounds. He objected to the opinion in that

it "makes the decision turn upon the rules and by-laws" of the union. His opinion, which is one of considerable length, takes up the question of the rules and by-laws. On the general proposition that "it is right that all the members of such a union should unite for the protection of the interests of every individual member" it follows that, "if the feeblest of its members has a just grievance as an employee against their common employer, it is proper that the whole combination should act together to obtain redress of the wrong." To do this effectively, he shows, the rule to which the majority objects is reasonable and lawful. The reasonableness of the rule is pointed out in detail. The objection on which he bases his opinion and his conclusions is the following: "If the decision were put on the ground that the strike was for a closed shop in the sense that the shop should be closed arbitrarily to all workmen not members of the union \* \* \* to compel all workmen to join the union for the purpose of creating a monopoly in the labor market, whereby to be able to contend successfully with employers whenever a controversy should arise, I should cheerfully concur in it. A strike to compel a closed shop, merely to accomplish such a purpose, would not be justifiable on principles of competition, either as against nonunion workmen or as against the employer, but would be unlawful."

While the unconstitutionality of laws to prevent the discharge of men because of their membership in unions cannot be doubted, yet the principles underlying the dissenting opinions are of interest. They suggest the question, whether in spite of the almost unanimous agreement there are not signs of the beginning of a modification, if not a change, in the view. The majority opinion is based on the long established and widely accepted understanding of freedom of contract. This is inherited from an earlier individualist period. Is that understanding formed in that earlier period to pass unmodified into our modern view of socialized industry? The extracts above quoted reveal clearly the origin of the view held by the majority of the judges. Do the dissenting opinions show the entrance of a new view?



Mr. Justice Knowlton, of the Massachusetts court, in a prevailing opinion, holds that this law is as unreasonable as would be a law which would prohibit the coercion of a person into joining a labor organization as a condition of employment, the two alike being a violation of freedom of contract. Mr. Justice Bartlett, of the New York court, in his dissenting opinion, at the outset declares positively in favor of freedom of contract. He then maintains that "a person desiring employment ought not to be required to abstain from joining any labor organization, nor should he be compelled to join a labor organization. The statute should have covered both cases." Yet he declares that he regards the legislation "as a step in the right direction" and concludes that the statute is not unconstitutional "but is to be regarded as a step in the direction dictated by every consideration of public policy."

Both are thus insistent upon freedom of contract. In the one case it is to be preserved after the old method of non-interference. Legislation forbidding an employer to require an employee either to join or not to join a union is an infringement of contractual freedom. This is the older view. It is also one that considers principally the position of the employer and his right to contract with whomever he may choose. In the other case freedom of contract is to be preserved, but by a different method,—that of legal enactment. Legislation declaring that an employer shall not discharge an employee because of either membership or non-membership in a union should be held as no infringement upon contractual freedom but rather as a protection to such freedom. This is the newer view. It is also one that considers the position of the employee and his right to contract with an employer for employment without regard to his relation with organized labor. The difference is a significant one. The position of the employee becomes one equal in importance to that of the employer.

These are the two views as revealed in the prevailing and dissenting opinions. If real equality before the law and real freedom of contract applied equally to both parties lies in either one of these two views and not in the other, it is important that it be known which is the one to be chosen. If it be true that actual equality lies in the minority view, that view must

ultimately express itself in the majority opinions. If labor unions are to continue to be recognized as legal in themselves, it is not easy to see why the employer should be left undisturbed in his position of bargaining advantage to dictate whether his employees should be members of unions or not. Clearly when one side has a decided advantage in making a bargain, as the employer generally has, it is not an exaggeration of terms to use the word dictate.

There are principles in Mr. Justice Holmes's dissenting opinion that are also significant. First is the fact of railroads as common carriers. Legislatures always exercise considerable control over public service corporations. The public interest is especially concerned. If unions are inseparably connected with the activity of these public service corporations, should not the government recognize it? Safety couplers, liability of master to servant, are simply instances of a large number of cases where legislatures now interfere. It seems to the mind of the justice that labor unions may reasonably be included in the list.

But the second point is of greater import. Individual rights as secured in the Fifth Amendment are at stake. But who are the individuals concerned? and what are the rights? The individuals are employees as well as employers. "The section simply prohibits the more powerful party to exact certain undertakings or to threaten dismissal or unjustly discriminate on certain grounds against those already employed." The notion of a choice of persons, or of individual bargaining, is referred to as a "fiction," both the fact and the necessity in actual industry being "wholesale employment." "This it might be proper to control." This is the practical view of employment as it exists. It throws altogether a new light upon the older view of individual rights in freedom of contract. What are the rights? The rights of these individuals are not passed without comment. The right to make contracts at will, derived from the word "liberty" in the Amendments, has, in the opinion of the justice, been "stretched to its extreme" by the decisions. Even these decisions, however, agree that sometimes the right may be restrained. The necessity arising out of public policy justifies the restriction and it is not for the court to determine the necessity.



This is the newer view again as applied to unions and common carriers. If it is to have any influence, it will be in the direction of bringing the majority opinions of the future more fully into line with the changed conditions of industry.

In the field of the closed shop the views of the judges have not been so generally on one side. The circumstances in which the agreements are made as well as the conditions of the agreements themselves enter into the determination of the opinion of the court. Interference with implied contracts already existing and coercion of the employer by the union are of importance. Yet when these are cleared away, there is the fact of monopoly which may easily bring the case within the anti-trust law or the common law. Here the individual view of the judge would be important and one might well expect differences of opinion. This being so, it seems that, coercion and violation of contract aside, a case still has a chance between two possible outcomes. The agreement may be accepted by the court as a voluntary one, where the parties were free to act, as in the New York case. Or it may be rejected, as in the Massachusetts case. In this latter case, however, the reasoning of the majority opinion was hardly as satisfactory as was that of the opinion of Mr. Chief Justice Knowlton. There it is clearly brought out that the agreement and the means adopted to secure it show a purpose of "creating a monopoly in the labor market." This is against public policy as destructive of competition, and not to be permitted.

So far, then, as these two points of policy are concerned the unions cannot be said to have accomplished much. The efforts to secure legislation to protect them in their membership have failed. Even should the minority opinion ever prevail it would be to the advantage of the laborer as a laborer and not as a unionist.

In the matter of the closed shop his success lies in making the agreements in such a way as to keep free from the courts. If the courts are appealed to, then there are the questions of coercion and of monopoly to be dealt with. Here the outcome is uncertain.

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## THE SECOND CLASS MAIL RATES.

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The loss on second class matter, p. 159; the claim that advertisements create first-class mail, p. 159; the claim that the railroads overcharge, p. 160; the claim that to abolish the franking privilege would wipe out the deficit, p. 162; the claim that the cost of handling second-class mail is low, p. 163; the educational value of periodicals, p. 164; relatively small number of books published in the United States, p. 165; newspapers and books compared, p. 165.

THE postmaster-general, following the president of the United States, has made certain allegations as to the cost of the service of carrying the second-class mail. Recent issues of periodicals have contained very urgent and emphatic denials of the accuracy of the statistics upon which the assertions of loss are based. I propose to examine the facts in the case and let the reader draw his own conclusions.

The total expense of the post office for the year ending June 30, 1909, the last fiscal year, for transportation and handling the total of some 1,290,000,000 pounds of mail was a little more than \$221,000,000. The amount that was paid by the publishers of the second-class mail (the newspapers and periodicals) was, as stated in the resolutions, \$7,236,000. The producers of that mail deny that it cost as much to handle that class of mail as the postmaster-general asserts that it did. The statistics of the postmaster-general are compiled from the working reports of the year combined with the reports of the postal commissioners of three years and four years ago—two different postal commissions—which gathered statistics from all over the country.

Let us consider first that one basis for making denial by the periodical publishers of the accuracy of the department's statistics is that the advertisements carried in the periodicals produce or create first-class mail.

In answer to that we should remember that the rural free delivery, which cost last year \$35,462,000, did not produce



more than about \$7,000,000 of revenue from all classes of mail matter that it created.

Now, a city man who sees an article advertised in the pages of some periodical, is likely to go to a shop to purchase it. He may in individual instances write a letter ordering it, putting on a two-cent stamp, three-fifths of which will be profit to the government; but he is more likely to go to a shop for it. The only persons in the country that will as a class persistently sit up nights writing letters ordering advertised articles after they receive fresh instalments of the magazines, will be the dwellers on the rural free delivery routes. But they only created about seven million dollars' worth of postage of all kinds last year. It is, as I conceive it, impossible that so much as one-third of that mail matter was originated in response to advertisements. We must admit that the farmer makes some use of the mails for social correspondence. So that the answer to that argument seems to me indicated very plainly, namely, that the second-class mail does not originate a very large amount of first-class mail compared with the total volume.

The producers of the second-class mail get a service for seven and a quarter million dollars that the government says costs more than seventy-three million dollars; though as I analyze the statistics, it seems to me that it is nearer ninety. The government says it incurs in the handling of that matter a loss of more than sixty-four million dollars; it seems to me that it was more; but, be the sum larger or not, the amount of first-class mail created by second-class in responding to advertisements was not an enormous amount, and the business men and manufacturers of the country will go right on producing the bulk of the first-class matter, even if the volume of second-class is curtailed by wise legislation.

One other contention made by periodical publishers in denial of the accuracy of the department's statistics is that the railroads charge the government too much for the carrying of the mails.

This assertion of the publishers is met by counter-assertions from the railroads that, instead of too much, they are not paid even enough for their work. Both are interested parties and

we must analyze the facts as best we can for ourselves. To begin with the railroads' assertions, they show that the total payments made to them for the last fiscal year was a sum a little in excess of forty-five million dollars (\$45,000,000); that weighings, upon which this amount is paid, are always made in summer, never when holiday traffic is on, and that their work covers a score of special services besides the mere carriage of the mails, one being the transportation of many thousands of sorting clerks, inspectors, etc., free of charge, this one item being equivalent, if transportation at two cents per mile be charged for it, to over \$12,000,000, or nearly 30 per cent. of all they receive. The pay covers the use of cars for postal services exclusively which are fully equipped post offices on wheels, which must be hauled on the fastest trains, and in which work is done in a way that requires maximum space for minimum weight—transportation entirely different in character from the hauling of closely packed freight or express matter. In many instances, too, the load is "*one-way*" only, in which case two trips have to be made for the price of one. The roads claim that they receive more for moving empty freight cars in freight trains than they do for hauling postal cars on swift passenger trains. In comparing the rates charged by railroads for hauling mail as compared with that received for handling express we should remember that "express is carried in cars weighing 60,000 to 65,000 pounds each, and in amounts of five to fifteen tons per car; perhaps a fair average is ten tons. Mail is carried in cars which weigh 95,000 to 105,000 pounds each, and the amount of mail carried averages under two tons if the car is a sorter—and about four-fifths of them are. Obviously two tons in a 100,000-pound dead-weight equipment will cost more for transportation per ton than will ten tons in a 65,000-pound outfit.

"Again, to light an express car, an oil lantern, a candle, or a few lights suffice, and the cost is nominal. To light a Pullman, however, costs about eight cents per hour, while the sorting mail cars must have a flood of brilliant light in all corners, and it costs the railroad  $17\frac{1}{2}$  cents per hour to light them. Again, depot trackage, much more expensive than yard trackage, must, in hosts of cases, be supplied to mail cars hours in advance of



the departure of night trains, and the cars must be heated by steam and fully lighted, perhaps from eight or nine o'clock at night to two, three or four o'clock in the morning, so that sorting may be expedited. Again, in olden times, the stage coach carrying mails had to turn aside from the main turnpike when it passed near any postoffice, not more distant than a quarter of a mile (80 rods) from the route, deliver the mail *without extra charge* and resume its journey. Similarly by inheritance, at several thousand railroad stations in the country, free delivery of the rail-transported mails must be made at the offices situated within 80 rods of the station, and this is an added expense which indicates a reason why it is impossible to handle mail and express matter at the same rate per pound."

In conclusion, it may well be borne in mind that postal rates are made *regardless of distance*, while express rates take account of length of haul. This important feature is lost sight of by publishers of second-class matter.

But even if the amount the government pays the railroads is too high by as much as ten or even twenty per cent., and provided the government could by proper legislation reduce the charge by the larger sum, there would still be a deficit in the receipts from the carriage of the second-class mail, as compared with the costs of the service, of about fifty-five million dollars per annum instead of the present loss of sixty-four millions.

Another contention of the publishers of second-class mail is that the franked matter, mailed free by congressmen, and the free departmental penalty mail, if charged for, would wipe out the deficit. To that the answer is emphatic; there was but about half-a-million dollars of congressional franked matter sent free last year; and only about five million dollars more of the penalty mail from all the various departments of the government, making a total of less than six million dollars so carried. To offset that there should be added to the net deficit of last year, and of each year, an item of many millions. For in estimating the true cost of the postal service there has been left out of the reckoning in the postmaster-general's reports the cost of the executive branch and the cost of maintaining the office of the auditor for the post office department. The items of

expense for their maintenance are charged in the legislative and not in the postal appropriations bill.

The cost of the executive branch of the post office department and the auditor's office was nearly three million dollars. Again, if the various buildings used by the government as post offices were to be rented, or an amount equivalent to proper rental and depreciation estimated, it is evident that a further expense of many millions annually would be saddled upon the department, increasing the net deficit.

Again, the contention is made by the publishers of agricultural journals and other classes of publications that, because much second-class mail, all sacked and routed, is delivered to the railroads, it costs the government very little to handle it. But along the road from publisher to reader comes a time when the routed sack must be opened, and the opened contents expensively gotten—each piece separately—into the hands of the addressee. Moreover, much mail of this sort can never be delivered, being made up of sample copies, to dead addresses, etc. At one small office, not seventy-five miles from Cleveland, the writer's home, in a single fortnight of January, 1907, the normal accumulation of such mail that was absolutely undeliverable was fifteen pounds, enough to just about fill an ordinary bushel basket. At this office, not two hundred persons draw mail; it is a country post office in the strictest sense, and from this mail had been culled every copy that was possibly deliverable. The postmaster told the writer that this was going on every fortnight in the year and at every country office in the United States, so far as he knew. There are over sixty thousand of these fourth-class offices, and the economic waste involved is not pleasant to contemplate.

In other denials they state that if a parcels carriage could be hitched on to the postal service, under laws formulated somewhat upon foreign lines, the deficit would be wiped out. We have not the space here to enter into a discussion of the merits of the parcels post. It is a large subject and should receive very careful consideration. I will simply say now that it is dangerous to let in any entering wedge.



One thing often brought forward in connection with this question is that the educational value of periodical literature is so great that, even if the deficit is seventeen million dollars a year, it is a very cheap price to pay for having such cheap reading matter for the masses.

In the first place, remember that the deficit due to second-class mail is far more than the net deficit, which is seventeen million dollars this year. The enormous profit of scores of millions of dollars a year produced by the first-class mail is all dissipated by the loss on second-class and on rural free delivery before any net deficit shows itself.

On the second-class mail alone the loss to the government during the past ten years has been more than five hundred million dollars. That is a pretty tidy sum to lose in one department, even for the wealthiest nation on the globe.

Now as to the educational value of periodicals. The bookseller is the under dog in this educational fight, and I want to say that, admitting that the under dog frequently deserves all he gets, once in a while he is treated unjustly. What is a magazine? A magazine is a *small body of literature entirely surrounded by advertisements*. It is a railroad ham sandwich with the literary "meat" cut in extremely thin, and the advertising "bread" in especially thick slices. The "literary" matter gives frequently great prominence to pictures of actresses (doubtless by favorable arrangement with managers). Then you read an article on "How Cleveland was Conned," "Why Denver went to the Devil," "Placid Philadelphia's Putridity," "Why Presidents' Sons become Pullman Company Presidents." Then may follow an article explaining how our reporter "Wily Willie" went under John D.'s window, and, by making a noise like a dividend, secured an interview with him. Then comes a long-continued dry-as-dust serial, furnishing, perhaps you may say, the talcum powder to disinfect, in some measure, the other articles; then a few piffling poems separate the longer articles, then often a green, yellow or appropriately *blue* leaf will be inserted making a Passionate Personal Appeal from the editor for subscriptions to a million dollars' worth of stock of the magazine company " \* \* \* \* send in any remittance from a dollar up, use the enclosed coupon." All is encased in a gaudy,

if not neat, cover, bearing a design which shows a girl's face and some of her form. If you want to see the rest of her form look at the corset advertisements on the inside. Then at the back appear advertisements of garters, safety razors, soaps, soups, massage cream, and a thousand other things—and that is a magazine. They are carried at a *cent* a pound; but the mail cost the government last year seventeen and one-quarter cents for every pound it carried. The first-class mail paid eighty-four cents a pound—postal cards, by the way, pay \$1.50 a pound or more—while second-class mail pays only one cent a pound, and while the government claims that it costs 9.23 cents per pound to handle it, it seems to me that the approximate cost is nearly twelve and one-half cents a pound.

Japan publishes three books and pamphlets per million inhabitants per annum, to one of the United States; she has in all 1,000 periodicals only. We had 3,890 new ones begin their career last year, 3,680 the year before, 3,913 the year before that, 3,924 the year before that. We have had over 40,000 new ones—more than ten a day, Sundays and holidays included—begin their career within the last ten years. While there is not a nation on the earth that produces one-tenth the periodical literature we do, there is not a nation, save Spain, that produces so few books and pamphlets per million inhabitants per annum as the United States. By the last reports Russia produces eighty-six, the United States eighty-one, Germany 244; and even little Switzerland, with three million inhabitants, produced one-third as many books last year as the whole United States with its 93,000,000 inhabitants.

I have told you what a magazine is, now what is a newspaper? I will not express my feelings in my own words; I will quote from the great librarian, Mr. J. N. Larned of Buffalo, his opinion as expressed in his "Books, Culture and Character":

But the common so-called newspaper of the present day, which is a mere rag-picker of scandal and gossip, searching the gutters and garbage-barrels of the whole earth for every tainted and unclean scrap of personal misdoing or mishap that can be dragged to light; the so-called newspaper which interests itself, and which labors to interest its readers, in the trivialities and ignoble occurrences of the day—in the prize fights and mean preliminaries of prize fights, the boxing matches, the ball games, the races, the teas, the



luncheons, the receptions, the dresses, the goings and comings and private doings of private persons—making the most in all possible ways of all petty things and low things, while treating grave matters with levity and impertinence, with what effect is such a newspaper read?

If I spoke my mind I might strike harshly at too many people whose reading is confined to such sheets. I will venture only so much remark as this: that I would prefer absolute illiteracy for a son or a daughter of mine, total inability to spell a printed word, rather than that he or she should be habitually a reader of the common newspapers of America to-day and a reader of nothing better.

Mr. Talcott Williams, a newspaper man in Philadelphia, at the session of the American Historical Association in Washington, a year ago, said that fifty years ago the aggregate weight of the issues of a large city daily for a year was about twenty-five pounds; twenty-five years ago it had become fifty pounds; to-day it is 125 pounds. You know what the Sunday and even week-day issues of a daily paper are.

Now as compared with magazines and newspapers, let us see what the book is. I quote again from Larned:

You and I, who live at this moment, stand islanded, so to speak, on a narrow strand between two great time-oceans,—the ocean of Time Past and the ocean of Time to Come. When we turn to one, looking future-ward, we see nothing—not even a ripple on the face of the silent, mysterious deep, which is veiled by an impenetrable mist. We turn backward to the other sea, looking out across the measureless expanse of Time Past, and lo! it is covered with ships. We see them rise from beyond the far horizon in fleets which swarm upon the scene, and they come sailing to us in numbers that are greater than we can count. They are freighted with the gifts of the dead, to us who are the children of the dead. They bring us the story of the forgotten life of mankind, its experience, its learning, its wisdom, its warnings, its counsels, its consolations, its songs, its discoveries of beauty and joy. What if there had been no ships to bring us these? Think of it! What if the great ocean of Time Past rolled as blankly and blackly behind us as the ocean of Time to Come rolls before us? What if there were no letters and no books? For the ships in this picture are those carriers of the commodities of mind which we call Letters and Books.

Think what your state would be in a situation like that! Think what it would be to know nothing, for example, of the way in which American Independence was won, and the federal republic of the United States constructed; nothing of Bunker Hill; nothing of George Washington,—except the little, half true and half mistaken, that your fathers could remember, of what their fathers had repeated, of what *their* fathers had told to them! Think what it would be to have nothing but shadowy traditions of the voyage of Columbus, of the coming of the Mayflower pilgrims, and of all the planting of life in the New World from Old World stocks,—think what it would be to know

no more of the origins of the English people, their rise and their growth in greatness, than the Romans knew of their Latin beginnings; and to know no more of Rome herself than we might guess from the ruins she has left! Think what it would be to have the whole story of Athens and Greece dropped out of our knowledge, and to be unaware that Marathon was ever fought, or that one like Socrates had ever lived! Think what it would be to have no line from Homer, no thought from Plato, no message from Isaiah, no Sermon on the Mount, nor any parable from the lips of Jesus!

Can you imagine a world intellectually famine-smitten like that—a bookless world—and not shrink with horror from the thought of being condemned to it? Yet the men and the women who take nothing from letters and books are choosing to live as though mankind did actually wallow in the awful darkness of that state from which writing and books have rescued us. For them, it is as if no ship had ever come from the far shores of old Time where their ancestry dwelt; and the interest of existence to them is huddled in the petty space of their own few years, between walls of mist which thicken as impenetrably behind them as before. How can life be worth living on such terms as that? How can men or women be content with so little, when they might have so much?

To speak of the educational value of the magazine and daily paper as compared with that of the great book is like comparing a moving picture show with the gallery of the Louvre. And yet our postal rates stimulate the former at the expense of the latter.

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## TYPICAL COMMERCIAL CRISES VERSUS A MONEY PANIC.

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### CONTENTS.

The stages of a typical credit cycle ending in a crisis, p. 168; panic caused by an unsound banking system, p. 170; other kinds of crisis, p. 171; characteristics of the crises of 1873, p. 172; 1882-84, p. 173; 1890-91, p. 174; 1893, p. 174; 1907, p. 175.

ONE of the essential characteristics of every crisis—perhaps the most distinctive one—is the collapse of credit and the associated fall of prices. Finally there is a recovery of credit; then, perhaps, excessive credit expansion, followed by another collapse. Let us trace the process, in detail, of a typical credit cycle, beginning with the gradual recovery from one panic and following through the next.

During the fall of prices immediately following a panic, there is little inducement for business men to borrow from the banks in order to extend their business, or even to continue it on so large a scale as previously. Such a disinclination to borrow for the sake of buying may cause a further fall of prices, but it will probably tend, also, to lower the rate of interest (or discount) on safe loans. This very consequence—low interest—may be the factor which prevents further decrease of borrowing and thus prevents further fall of prices. At any rate it is evident that the collapse of credit must have a limit; that when such limit is reached, rapid fall of prices is likely to cease; and that with reasonably encouraging conditions (such as low discount rates) business stagnation is likely to give place to activity.

Eventually the revival of business is sure to bring with it a greater demand for bank credit, and the extension of credit conduces to a rise of prices, for bank credit is purchasing power as truly as money is and tends to affect prices in the same way. This rise of prices adds to the profit of the borrowing entrepreneur. To be sure, he may have to pay as much more for

what he buys as he gets for what he sells, but *he doesn't have to pay proportionately more interest on his loans*. If prices are rising 3 per cent. a year, a rate of interest of 5 per cent. is really (i. e., in purchasing power) only (about) 2 per cent.;<sup>1</sup> since it requires 3 per cent. more money to buy the same things. But since the rise cannot be foreseen, and since, also, instability in the standard of value is largely ignored, the rate of interest does not, for a considerable time, adjust itself by a corresponding rise.<sup>2</sup> If it adjusted itself quickly to every slightest change in the price level, the artificial stimulus to rapid expansion of bank loans would be largely removed, and there probably would not be such a speculative credit expansion and continuous rise of prices culminating in a crisis. Since, however, interest does not at first adapt itself, borrowing is exceedingly profitable to the entrepreneur. Any loss falls on the lender. There is, in consequence, a further expansion of bank credit, generating a further rise of prices,<sup>3</sup> which may generate by the same process a further rise,<sup>4</sup> and so on.

But such a self-perpetuating sequence can not go on indefinitely. Eventually the demand for loans at the low (virtual) interest is likely to exceed the supply, and the rate must rise. From the point of view of the banks the situation is expressed by saying that they have lent, in the expanding period, up to the limit which their reserves will support, and that they raise their discount rates to protect their reserves.

It is this very rise of interest in belated adaptation to rising prices which, in the theory of credit cycles here presented, precipitates the crisis.<sup>5</sup> For the rise of interest itself stops further rise of prices by checking further expansion of bank credit. And when prices cease to rise, virtual interest (interest

<sup>1</sup> More exactly 1.94 per cent. For a discussion of the relation of interest rates in different standards see Irving Fisher, "The Rate of Interest," New York (Macmillan), 1907, Chap. V.

<sup>2</sup> Fisher, "The Rate of Interest," Chap. XIV.

<sup>3</sup> Cf. article by Knut Wicksell in the *Jahrbücher für Nationalökonomie*, 1897 (Band 68), pp. 228-243, entitled "Der Bankzins als Regulator der Warenpreise."

<sup>4</sup> Cf. Alfred Marshall, "Principles of Economics," Vol. I, 3d ed., New York (Macmillan), 1895, p. 674.

<sup>5</sup> Cf. Fisher, "The Rate of Interest," p. 336.



measured in what money will buy) is as high as nominal (or money) interest. It is, in fact, likely to be so high that many business houses are hard pressed to make ends meet.

With a banking system so sound and well organized that confidence in it never waned, the sequence would now be the reverse of that so far described. The high interest would discourage borrowing as the low interest had stimulated it. Bank credit would cease to expand and possibly fall off. Prices would begin to fall. Falling prices would mean that a high nominal (or money) interest was a still higher virtual interest, since each dollar, when repayment was made, would buy more (and more goods would have to be sold to get it) than when loaned. Thus if interest as ordinarily measured, in money, were 6 per cent. and prices were falling at the rate of 5 per cent. a year, the actual interest in purchasing power would be approximately 11 per cent. The fact that virtual interest, because of falling prices, was higher than nominal interest, would still further decrease the demand for loans and still further lower prices,<sup>6</sup> until finally there came a belated reduction of interest and prices reached their lowest point. Such would be a typical credit cycle with a properly organized banking system—an alternation of speculative prosperity and depression, preventable, not by better institutions, but only by better knowledge of the significance of changing price levels.

But with a banking system which, at the least sign of business strain, loses the confidence of the people, the panic is accentuated. The rise of interest at the crisis point not only renders it difficult for some business houses to make ends meet; it also disturbs confidence in the banks, partly perhaps because the rising discount rate is looked on as a sign of fear, partly because the difficult position—in some cases maybe even the failure—of different commercial and industrial companies suggests that the banks may not be able to realize on all of their creditors when their obligations come due. Distrust having been stimulated, there are likely to occur runs on the banks at the very time when they have already expanded their credit to the limit the

<sup>6</sup> Cf. Wicksell, "Der Bankzins als Regulator der Warenpreise"; and Marshall, "Principles of Economics," Vol. I, 3d ed., p. 674.

reserves will safely support, and are therefore least able to afford depletion of those reserves. It is then that panic rates of interest obtain. Ordinarily the borrowing of money is, in the last analysis, a borrowing of capital. If there were, continuously, only half as much currency, interest would be no higher. Though there were but half as much currency to lend, yet since prices would be but half as high, only half as much would be wanted by borrowers. But a panic period is a period up to which currency has been relatively plentiful and in which it has suddenly (because of a credit slump) become scarce. Persons who have bought goods and taken upon themselves obligations when currency was plentiful are compelled to repay when it is scarce, and they must repay in currency. Hence, currency is desired, not, with them, as a medium for getting capital, but in, and of, itself,<sup>7</sup> and its scarcity, in this exceptional case, makes the rate of interest soar. There come failures, and a depression more severe, perhaps, and certainly more sudden, than would otherwise occur. Prices fall rapidly. Interest fails to adjust itself. Hence more failures, further contraction of credit, further fall of prices, and so on.

This is a generalized history of typical credit cycles ending in speculative crises.<sup>8</sup> Other crises can, however, be brought about in other ways. Anything tending to destroy business confidence and so tending to decrease credit, either directly by preventing borrowing, or indirectly by causing runs on the banks and so curtailing their ability to lend, will cause prices to fall and thus compel borrowers to repay debts in an appreciated currency (i. e., make virtual interest abnormally high). And in such a crisis, equally with one terminating a speculative credit expansion, the sudden currency scarcity will be likely to produce characteristic panic rates of interest. But in a crisis not of the typical speculative sort we should not expect to find, leading up to it, any marked rise of prices or interest rates, or any increasing ratio of bank credit (e. g., bank deposits) to reserves. Of

<sup>7</sup> Fisher, "The Rate of Interest," pp. 325 and 326.

<sup>8</sup> The subject of crises in their relation to money and deposits, velocity of circulation, prices, etc., is discussed in a book soon to be completed by Professor Irving Fisher, on "The Purchasing Power of Money," in the preparation of which the present writer has assisted.



course a depression due to some natural cause, such as a crop failure, or to a maladjustment of different kinds of production in their proportions, might entail depression in a community which used no credit media of exchange at all. Such a depression might or might not be aggravated, in a modern community, by a decrease of credit in greater amount than the decrease of business, causing fall of prices.

Following are statistics for some of the principal crises of recent years in the United States, with comparisons and contrasts:

THE CRISIS OF 1873 IN THE UNITED STATES.\*

Date	Deposits of Na- tional Banks	Reserves of Na- tional Banks	Ratio of Deposits to Reserves	Index Number of Prices	Per cent Rise of Prices	Interest, Prime Two-Name 60-day Paper	Virtual Interest
1870	\$542 million	\$171 million	3.2	142.3	-4.4	7.2%	11.6%
1871	602	175	3.4	136	2.1	6.1	4.0
1872	619	161	3.8	138.8	-1.0	8.0	9.0
1873	641	158	4.1	137.5	-3.3	10.3	13.6
1874	623	175	3.6	133	-4.1	6.0	10.1
1875	686	156	4.4	127.6	..	5.5	..

The crisis of 1873 in the United States occurred during the greenback period, when the money in the country was substantially constant in amount and trade increasing. Apart from the expansion of bank credit we should expect prices to fall. Even

\*The figures for deposits and reserves of national banks in this and the following tables are from the reports of the comptroller of the currency and represent the condition of the banks at their third report to the comptroller (generally about July 1) of each year. The figures for prices, except for the last two panics treated, are from the Aldrich report on wholesale prices and are averages for each year. The figures for interest rates are taken from the appendix of Professor Fisher's "The Rate of Interest," pp. 418, brought through 1908 by compilations from the *Financial Review*. The per cent. rise of prices is combined with money interest, to get virtual interest. Consequently, since the interest rates cited relate to each year and are an average for each year, the prices ought to relate to the beginning of each year. Then the per cent. rise (or, if negative, fall) of prices would be the rise during the calendar year and the virtual interest could be correctly calculated. It is impossible to get such figures for the earlier crises discussed. Hence the per cent. rise of prices is the change from the average prices of one year (the year given) to the average of the next. The figures for virtual interest are, therefore, not reliable, but it is believed that they are not entirely valueless. For 1904-1908 more accurate calculation was possible.

with such credit expansion we should not expect a very great or long-continued rise. The expansion of deposit currency we do find, reaching a maximum in 1873 and decreasing the next year. Reserves, as we should expect, are highest in the year after the crisis—that is, in 1874. The ratio of deposits to reserves increases, in accordance with the theory of a speculative crisis, up to and into 1873, and then falls off, although there is a very rapid recovery in 1875. Prices, though falling during most of the '70's, show a rise between 1871 and 1873, the rapid fall being resumed with the latter year. Interest rates, both nominal and virtual, are exceptionally high in 1873. We can hardly assert, however, in this case, that the crisis was caused by a too low virtual interest stimulating credit expansion, since the previous years show, on the whole, an even higher virtual than nominal rate, although this is not true for 1871. That year showed the largest gain in bank deposits over the preceding year for several years, but it would be unsafe to attribute this credit expansion entirely to the lower interest.

#### THE CRISIS AND DEPRESSION OF 1882-4.

Date	Deposits of Na- tional Banks	Reserves of Na- tional Banks	Ratio of Deposits to Reserves	Index Number of Prices	Per cent Rise of Prices	Interest, Prime Two-Name 60-day Paper	Virtual Interest
1879	\$ 649 million	\$135 million	4.8	96.6	10.7	5.0%	-5.7%
1880	834	176	4.7	106.9	-1.1	5.2	6.3
1881	1,032	197	5.2	105.7	2.6	5.2	2.6
1882	1,067	187	5.7	108.5	-2.3	5.7	8.0
1883	1,043	200	5.0	106	-6.2	5.5	11.7
1884	979	196	5.0	99.4	-6.4	5.2	11.6
1885	1,106	280	4.0	93	-1.2	4.1	5.3
1886	1,113	221	5.0	91.9	..	4.7	..

The crisis of 1882-4 occurred after we had returned to a gold standard. It appears to be typically a credit crisis. There was an increase of deposit currency, steady and rapid, up to 1882, followed by a decrease in the two succeeding years, especially 1884. The reserves were built up in 1883 to a high figure compared with those of previous years, falling off slightly in 1884, but reaching a much higher figure in 1885. The ratio of deposits to reserves, which had fallen to 3.6 after the crisis of 1873, rose gradually to 5.7 in 1882, falling in the three succeeding years



and getting below 4 in 1885. Prices rose, on the whole, from 1879, the resumption year, to 1882, falling in the succeeding years, and falling with especial rapidity between 1883 and 1885. Interest reached a maximum, measured in money, in 1882, while virtual interest, because of the fall of prices, was high in all three years, 1882, 1883 and 1884. Here we can say with more show of reason that the low virtual interest of 1879 (actually negative) and 1881 may have been a cause of the rapid expansion of deposits, which was checked by the high rate of 1882.

The crisis of 1890-91 seems to have been, also, a typical speculative or credit crisis, but it was of relatively slight importance and was completely overshadowed by the panic of 1893. We will, therefore, turn our attention to the latter.

The panic of 1893 was apparently not due to abnormal speculative expansion. It is commonly believed to have been a money panic. The business community feared that the United States would go upon a silver standard, and when, following the closure of the British India mints to silver, the price of that metal suddenly dropped, the runs on the banks began. Probably the fear was, so far as it was definitely formulated, that money left on deposit in the banks might be repaid in silver or silver certificates. At the time, that money was as good as any other, but there was no telling how long it would be. Ready cash of any sort was preferred to the obligations of the banks.

#### THE CRISIS OF 1893.

Date	Deposits of Na- tional Banks	Reserves of Na- tional Banks	Ratio of Deposits to Reserves	Index* Number of Prices	Per cent Rise of Prices	Interest, Prime Two-name 60-day Paper	Virtual Interest
1890	\$1,522 million	\$281 million	5.4	115	1.1	6.0%	4.9%
1891	1,535	310	5.0	116.3	-7.2	5.7	12.9
1892	1,753	366	4.8	107.9	-3.2	4.3	7.5
1893	1,557	289	5.4	104.4	-10.6	7.1	17.7
1894	1,678	439	3.8	93.2	-1.6	3.4	5.0
1895	1,736	383	4.5	91.7	..	3.8	..

\* The index numbers of prices here used are those of the Bureau of Labor, Bulletin 81, March, 1908. They are averages for each year.

It will be noticed that although there is an expansion of deposits in 1892, there is not a higher ratio of deposits to reserves

than in the previous years. This may be partly due to a building up of bank reserves after the slight crisis of 1890-91, but it is at least evident, whatever the cause, that deposits had not expanded unduly in relation to their support. The relation of deposits to reserves was very high in 1893, but this was due, not to an expansion of deposits, which in fact had fallen off decidedly,<sup>10</sup> but to a depletion of the reserves consequent on the runs on the banks. The column for reserves shows, as we should expect, a considerable building up in the next year. Thus, with a greatly decreased deposit currency and money withdrawn from circulation to serve as reserves for it, we are prepared to find, as we do, a drop in prices of considerable extent. We should expect to find, also, however the panic was caused, a high rate of interest in the panic year because of the sudden scarcity of currency before alluded to. This we find. It is not, however, the culmination of a gradually rising rate, but a high rate suddenly occurring without much warning. It is also, because of the great drop in prices, a tremendously high virtual rate. The panic of 1893, then, is in some ways a striking contrast to the others we have considered, and it is a contrast in just the ways we should expect it to be. On the other hand, it has in common with them the credit slump, the panic rates of interest, the large reserves in the succeeding year, and the abrupt drop in prices.

#### THE CRISIS OF 1907.

Date	Deposits of National Banks	Reserves of National Banks	Ratio of Deposits to Reserves	Index* Number of Prices	Per cent Rise of Prices	Interest, Prime Two-name 60-day Paper	Virtual Interest
1904	\$3.31 billion	\$658 million	5.0	113.2	.7	4.2%	3.5%
1905	3.78	649	5.8	114	5.3	4.3	-1.0
1906	4.06	651	6.2	120	6.6	5.7	-0.9
1907	4.32	692	6.2	127.9	-1.4	6.4	7.8
1908	4.38	849	5.1	125.7	..	4.4	..

\* Index numbers of prices in this table are those of the Bureau of Labor and relate to January of each year in question. In this table, therefore, the column headed "per cent. rise of prices" indicates the per cent. rise *during* the year in question, or from January of that year to January of the next. Hence, the figures for virtual interest are more reliable than in the previous tables.

<sup>10</sup> The panic began in this case before the middle of the year, and as the



The panic of 1907 is again the culmination of a typical credit cycle. Here we find the increase of deposits, and especially an increasing ratio of deposits to reserves, up to the crisis year, followed by a building up of reserves in the year after. Though deposit currency for national banks does not show a decrease in 1908, it is to be noted that the increase is much less rapid than before. We have also a rise of prices, reaching its culmination in 1907 and then falling, and a similar rise of interest, succeeded by a fall. The theory that a low virtual rate of interest in the previous years furnishes a stimulus to the credit expansion, seems, in this case, to be extremely plausible, since the average virtual interest for the three previous years is scarcely above one-half of one per cent.

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figures for deposits and reserves are for the middle of the year, these figures show the effects of the runs on banks. Those effects are not shown in the figures for 1907, as the panic came in the fall.

## NOTE.

### **The United States Steel Corporation and the Panic of 1907.**

The United States Steel Corporation, as the largest industrial organization in the world, and as typical of the combinations resulting from the so-called trust movement, has been a subject of considerable interest and study to students of corporate finance and business men generally. The question of its financial stability and of the success of its price policy have, since its organization, been of considerable significance to the industrial and financial interests of the entire country. Until the fall of 1907 the Corporation had not been called upon to stand the test of a period of serious business depression, and the successful weathering of such a period seemed to many quite problematical. The country has now passed through a period which, although comparatively short, was one of the most severe ever experienced, especially as regards the iron and steel industry.<sup>1</sup>

The Corporation started on its career in 1901 over-capitalized to the extent of several hundred million dollars. In the exchange of securities, the aggregate capitalization of the ten smaller combinations which were joined to form the United States Steel Corporation was increased by more than three hundred million dollars.<sup>2</sup> Most of these constituent companies had already been

<sup>1</sup> As to the severity of this period of depression, and the value of the period as a test of the stability of the Steel Corporation, the *Commercial and Financial Chronicle* said editorially, on three different dates as follows: " \* \* \* the country has scarcely ever had—certainly not in recent decades—any such severe period of business depression as it is experiencing at the present time" (March 28, 1908). "The iron and steel trades have been notoriously subject to sharp ups and downs, but in his annual report, issued two weeks ago, Mr. Swank, who is admittedly the highest authority, makes the statement that so violent, instant and wide-spread reaction as the iron trade has experienced since last October is entirely without precedent" (August 1, 1908). "In trade and mercantile affairs the year 1908 was one of intense depression, relieved only by a partial recovery the latter part of the year. It is probably no exaggeration to say that the industrial paralysis and prostration was the very worst ever experienced in the country's history" (January 2, 1909).

<sup>2</sup> Burglund, "The United States Steel Corporation," p. 103.



considerably over-capitalized when they were formed a year or two before; it has been estimated that \$240,000,000 of the capitalization of seven of them represented no tangible assets.<sup>3</sup> The first annual report of the Corporation showed a bonded debt amounting to \$360,754,327, which was later increased in 1902 \$150,000,000 by the well-known bond conversion scheme.

There has, therefore, always been considerable doubt in the minds of many, and among them recognized authorities on corporate finance, as to the ability of the Corporation to meet its obligations, if forced to endure a period of business depression.<sup>4</sup> It was pointed out a short time after the Corporation was organized that should prices and earnings in the steel trade in the future follow the direction of their past history, it would be impossible for the Steel Corporation to pass through a period of depression successfully.<sup>5</sup> It was assumed that the Corporation would not have the necessary control over prices, and also that it would not be able to appropriate from earnings enough to strengthen its position against hard times. The recent period of depression, following the panic of 1907, has thrown some light on these questions.

That the management of the Steel Corporation has seen the necessity of strengthening the position of the concern is readily seen by the liberal policy of appropriations from earnings for extensions and additions to plants. Take for example the year 1906. The net earnings for this year were \$156,624,000, and out of this a round fifty million dollars were applied toward capital outlays or in the discharge of capital obligations, entirely

<sup>3</sup> Burglund, "The United States Steel Corporation," p. 108.

<sup>4</sup> "In so far as the capitalization of the Steel Corporation was based upon earnings, it was so based in a period of good times. What the several constituent companies could earn during normal times, or during an epoch of depression, was a matter of uncertainty. In 1896 and 1897 the Carnegie Steel Company is said to have earned between one-sixth and one-seventh of its net income in 1900; while during the same period the Illinois Steel Company passed all dividends and was reported to be falling behind in meeting current expenses. As these two companies were among the most powerful then existing, they may be said to typify conditions which must be taken into consideration in capitalizing an iron and steel combination." (Burglund, "The United States Steel Corp.")

<sup>5</sup> Meade, "Trust Finance."

separate from the usual appropriations for depreciation and extinguishment funds, replacement and improvement funds, and for sinking funds for the bonds of the Corporation and its subsidiaries, which amounted to a total of \$34,707,000.<sup>6</sup> In other words, \$84,707,000 went to provide additions and improvements to the various properties, or was used in the extinguishment of outstanding capital obligations, while only a little over thirty-five million dollars were distributed in the shape of dividends.<sup>7</sup>

The significance of this policy is seen, when we consider the enormous total which these appropriations reach for the whole period since the organization of the Corporation. The *Commercial and Financial Chronicle*<sup>8</sup> gives this total up to the end of 1907 as \$402,848,076. Over four hundred million dollars of the net earnings of the Corporation have been put back into the property. From this it is evident that, if all the common stock, the amount of which outstanding on December 31, 1907, was \$508,302,500, represented nothing but speculative profits and no actual cash investment, it is rapidly being paid for from earnings.

The result of these expenditures on the productive capacity of the Corporation is shown in the following table,<sup>9</sup> which gives the increase in capacity from the date of organization to 1907:

	Per cent. of increase due to purchase of other companies.	Per cent. of increase due to additions and improvements.	Total increase per cent.
Pig iron .....	16.50%	46.62%	63.12%
Steel .....	13.35	43.29	56.64
Blooms, billets and slabs.....	17.08	44.69	61.77
Sheet and tin plate bars.....	7.90	81.15	89.05
Finished steel and iron products...	14.32	30.01	44.33

From this table it will be seen that the Corporation in less than six years has increased the productive capacity of its various departments from 44 per cent. in the case of one to 89 per cent. in another.

<sup>6</sup> *Commercial and Financial Chronicle*, March 16, 1907.

<sup>7</sup> 2 per cent. on common required \$10,166,050, and 7 per cent. on preferred \$25,219,677.

<sup>8</sup> *Commercial and Financial Chronicle*, March 21, 1908.

<sup>9</sup> *Ibid.*, March 16, 1907.



The importance of increasing the productive capacity will be more easily seen when we consider what would have happened, if the Corporation had not reinvested this four hundred millions to maintain its place in the industry. The Corporation made in 1908 slightly more pig iron in proportion to the total production of the country than in 1907,<sup>10</sup> and its production of steel in 1908 had practically the same ratio to the total production of the country as in the year previous, about 56 per cent.<sup>11</sup> In 1901 the Corporation had produced about 66 per cent.<sup>12</sup> of the country's steel, and as this was a year of good demand for iron and steel products, we may assume that the mills were operating at approximately their full capacity. On this basis, the steel capacity of the Corporation was about 9,000,000 tons in 1901. Assuming that this capacity had not been increased during the next six years, the Corporation would only have been able to produce about 38 per cent. of the country's steel in 1907, instead of 56 per cent. Now we have seen that in the year of depression the Corporation produced approximately the same proportion of the total output of the country as in the prosperous year preceding. We may assume, therefore, that it would have had somewhere near the same proportion of business in 1908 as in 1907, whatever its actual capacity in tons might be, and, under the conditions assumed above, this would have been about 38 per

<sup>10</sup> The Corporation's percentage of the total production of the country was 41.9 per cent. in 1907 and 43.5 per cent. in 1908.

<sup>11</sup> In 1908 the Corporation produced 56.2 per cent. of the country's steel as against 56.4 per cent. in 1907.

<sup>12</sup> Annual Report of the United States Steel Corporation for 1908.

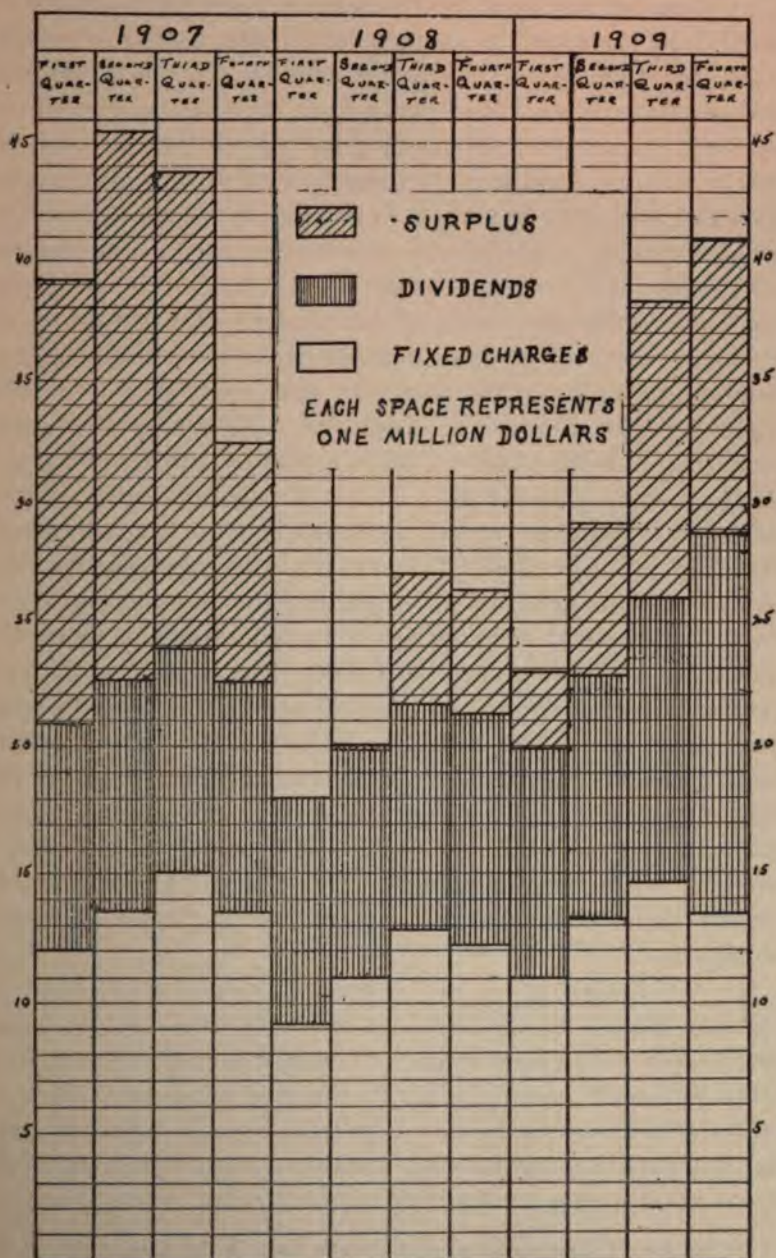
NOTE.—The chart on the next page shows the net earnings during the years 1907-1909, distributed as follows:—

(1) The amount of expenses in the nature of fixed charges; i.e. sinking funds, and interest for bonds of the Corporation and subsidiaries, depreciation funds, etc.

(2) The amount distributed as dividends.

(3) The surplus earnings remaining after dividends have been paid; including special appropriations for improvements and construction, and the undivided surplus which is eventually used in a similar way.

Dividends for the fourth quarter of 1909 include an extra dividend of  $\frac{3}{4}$  per cent. on the common stock (amounting to \$3,812,269), making the total paid for the year 4 per cent.





cent. Now 38 per cent. of the country's steel production in 1908<sup>13</sup> would amount, in round numbers, to 5,300,000 tons, as against the 7,838,713 tons which the Steel Corporation actually produced in that year. In other words, the steel production of the Corporation would have been about 32 per cent. less than it actually was for 1908, and the disastrous effect on earnings can easily be imagined. If we add to this loss by decreased amount of business the probable loss due to considerably less influence in maintaining prices, which would be the natural result of a materially smaller proportion of the country's output, we have a situation which would have undoubtedly shaken the financial integrity of the Corporation to a very serious extent.

The depression, however, instead of endangering dividends, simply checked the policy of further additions to the property during the time of depression. This does not mean that no contributions of any kind were made from earnings to improvement or debt extinguishment funds; only the large special appropriations were rendered impossible. Over twenty-two million dollars were contributed to improvement, depreciation and debt extinguishment funds, and still a surplus of more than ten million dollars remained, after paying the regular 7 per cent. dividend on the preferred stock and 2 per cent. on the common. This excellent showing in the face of extremely adverse conditions must not be solely attributed to the large appropriations from earnings, however, for even with these the Corporation would have been in danger of not earning enough for dividends, had it not been for the firm adherence to the price policy adopted at the formation of the organization.

The well-known policy of the Steel Corporation has been to introduce greater stability in iron and steel prices, which have always been notoriously subject to violent oscillations. It has maintained prices relatively low in times of prosperity, when it could easily have raised them, thus lessening the inducement to others to enter the industry, and making competition in times of depression less severe. A period of comparative calm and order,

<sup>13</sup> Production of Bessemer and open-hearth steel in the United States in 1908 was given by the U. S. Geological Survey as 13,953,484 tons.

in which the only disturbing features have been in lines in which the Steel Corporation was not yet dominant, has succeeded a condition where everything was uncertain and unstable.<sup>14</sup> "Since the formation of this organization, the fluctuations in the prices of iron and steel have been less marked than in any other period of similar length since 1860."<sup>15</sup> The maintenance of prices during the year of depression, 1908, was of great importance not only to the Corporation, but to its customers and to the whole country.

The falling off in Bessemer steel production and the complete collapse in the iron and steel industry must, in a very great measure, be ascribed to the absence of railway orders. For more than a year previous to the panic the railroads had been having difficulty in obtaining new capital for extension and improvement work, and during 1908 it was practically impossible. At the same time railway earnings were almost cut in two, and a very marked curtailment in railway expenditures for equipment took place. In 1907 the railroads of the United States, Canada and Mexico spent over \$475,000,000<sup>16</sup> for equipment, and the corresponding expenditures for 1908 were only about \$130,000,000.<sup>16</sup> The number of freight cars built in 1908 is estimated at 78,000, as against 290,000 in 1907, and the number of locomotives at 2,342 compared with 7,362.<sup>16</sup> The production of all kinds of steel rails in the United States in 1908 was reported as 1,921,611 tons, compared with a total of 3,633,654 tons in 1907, representing a decrease of over 47 per cent.<sup>17</sup> The railroads could not get new capital until confidence returned, and consequently in a period of depression their purchases of equipment were restricted to absolute necessities.

Under these circumstances, unrestricted competition and greatly reduced prices would not have stimulated demand materially above that required by the barest necessities for carrying on business. In this respect iron and steel products differ from the necessities of life in the conditions of their production

<sup>14</sup> Meade, *Quarterly Journal of Economics*, XXII: 452-456 (May, 1908).

<sup>15</sup> Burglund, "The United States Steel Corporation."

<sup>16</sup> *Commerical and Financial Chronicle*, February 6, 1909.

<sup>17</sup> Annual Report of the American Iron and Steel Association, 1908.



and demand. Iron and steel is purchased for the construction of office buildings, railroads, ships and machinery, for the profit which may be obtained from their operation, and the demand is more directly influenced by conditions of trade and the prospect of profit from the use of the article purchased than by the price.<sup>18</sup>

A reduction in the price of steel under such conditions would be a matter of small consequence to consumers of steel products, demand would be increased to no appreciable extent, and the earnings of the steel companies would be decreased to no purpose except an insignificant saving to each consumer. An unsettled condition of prices would, in addition, be a considerable handicap to the restoration of confidence and settled business conditions, and the inevitable disturbance to the Steel Corporation's finances would result in further serious disturbances in the general financial situation.

As a result of the Steel Corporation's price policy there was greater stability in steel prices during 1908 than in any previous period of depression. Iron and steel prices are two more or less distinct propositions as regards the price policy of the Corporation; the percentage of the country's production of pig iron is considerably less than that of steel, and the Corporation does not produce pig iron for the market, but uses it all for conversion into steel. At times, even, the Steel Corporation buys pig iron in the market. It can not, therefore, exert as much influence in the pig iron market as it can in steel, and consequently pig iron prices have not been as stable as steel prices, although the fluctuations have been less than before the organization of the Corporation. For purposes of comparison take steel billets at Pittsburg. In March 1900 the price was \$35.00, and by September of the same year the price had dropped to \$17.50; a decline in six months of \$17.50. During 1907 the highest average monthly price, which was the highest since April 1903, was reached in June when it was \$31.00, and the lowest average monthly price during 1908 was \$25.00<sup>19</sup> in July. The decline here was only \$6 as compared

<sup>18</sup> For a more complete discussion of this theory of production and demand in the iron and steel trade see Meade, "The Price Policy of the Steel Corporation," *Quarterly Journal of Economics*, XXII: 452-456 (May, 1908).

<sup>19</sup> This and preceding prices are taken from *The Iron Trade Review*, January 6, 1910.

with one of \$17.50 in six months in 1900, and this in the face of "a shrinkage in the steel output of the country which for mere magnitude has never been equalled on any previous occasion."<sup>20</sup> If the yearly averages are compared, the figures are still closer; the average yearly price for 1907 was \$29.25 compared with \$26.31 for 1908.<sup>21</sup> In the annual report of the Corporation it is stated that in the domestic trade the prices received for steel products shipped during 1908 averaged substantially the same as those received the previous year.<sup>22</sup> It will be seen therefore that prices were maintained within reasonable limits in the face of almost fifty per cent. decrease in demand. To the success of this policy must be attributed the fact that no general wage reductions to the several hundred thousand employees of the steel plants were deemed necessary during 1908, and it certainly had considerable influence on the financial conditions of the smaller and weaker steel manufacturers during this period of trade prostration. This stability was directly due to the price policy of the Steel Corporation, and the harmonious coöperation of the larger independent concerns.

While there had occurred a spurt in business activity and in the demand for iron and steel products immediately before and after the presidential election, conditions soon became dull again, and *Iron Age* reported that there was some disappointment at the manner in which new business had flattened out in January (1909), although January is usually considered a quiet month in the trade. Railroad reports showed that they were still materially curtailing disbursements. Under these conditions many of the smaller steel manufacturers, who had not been coöperating with the leading concerns, showed a disposition to cut prices below those generally being maintained.

Giving this as one of the reasons for their action, Judge Gary, Chairman of the Executive Committee of the Steel Corporation, announced on February 19 that the leading manufacturers of iron and steel had "determined to protect their customers and for the present at least to sell at such moderate prices as may be necessary

<sup>20</sup> *Commerical and Financial Chronicle*, March 6, 1909.

<sup>21</sup> Annual Report of the American Iron and Steel Association, 1908.

<sup>22</sup> Annual Report of the United States Steel Corporation, 1908.



with respect to different commodities in order to retain their fair share of the business."<sup>23</sup> In other words, the Corporation had abandoned fixed schedules and a price policy which it had maintained since its organization. That the reason which Judge Gary gave was the sole reason for this abandonment of the established price policy seems doubtful, in view of the fact that the Corporation maintained its full share of the country's steel business throughout the year of great depression. The other leading manufacturers were acting in harmony with the Steel Corporation in this matter of prices, and it does not seem probable that price cutting by the smaller independent companies, controlling only a very small percentage of the business, would affect their business so seriously as to demand the abandonment of a cherished policy which had always been strictly adhered to up to that time. There is a hint in Judge Gary's statement of another reason. Among the factors which influenced the smaller concerns to cut prices, he mentions the fact that Congress was then considering the new tariff. That the purpose of this move was to impress on Congress the serious effect on business, in the event of a tariff compelling reduced prices on iron and steel products, can not be definitely stated, but it is a possibility.

This declaration of the Steel Corporation was followed by price reductions which resulted in business being brought almost to a standstill, for consumers naturally held off awaiting further reductions. Prices generally reached their low mark for the year in April, when there was a turn for the better and prices continued to rise throughout the remainder of the year. The market was slow, however, through spring and early summer, but toward the end of the first half-year general trade conditions became better, and trade activity increased, until by the end of the year iron and steel production was breaking all previous records.

The effect of this price cutting on the Corporation's earnings gives some indication of what the effect would have been had prices been reduced early in 1908. The Corporation's net earnings for the first quarter of 1909 were about \$3,300,000 less than the net earnings for the previous quarter.<sup>24</sup> If this had occurred

<sup>23</sup> *Commercial and Financial Chronicle*, February 20, 1909.

<sup>24</sup> The net earnings for the last quarter of 1908 were \$26,225,000, and for the first quarter of 1909 \$22,921,000.

in the early part of 1908, concurrently with the extreme trade prostration, the earnings, reduced as they were from \$160,965,000 in 1907 to \$91,826,000 in 1908, would have been further reduced to the extent of endangering not only the common but the preferred dividends. As it was, the price reduction did not come, until trade conditions had begun to improve, and prices were soon on the upward turn.

The stability of the Corporation throughout the period of depression was, therefore, directly due to the large appropriations from earnings to maintain the Corporation's place in the industry, and thus make possible the maintenance of the price policy, which in itself was an important factor, throughout the worst part of the period of business depression.

It must not be thought, however, that simply because the Corporation has passed through the recent period of depression without failing to earn its dividends, it will necessarily be able to successfully weather the next financial storm without a continuance of the policies of its management heretofore adhered to. The demand for iron and steel products is already breaking all previous records, and under its influence the productive capacity of the country's mills will be largely increased. The Corporation will have to keep pace with the growth in the industry, and make further large appropriations from earnings for improvements and additions in order to maintain its place in the industry against the next period of depression, which is sure to come sooner or later.

G. B. GOULD.

Yale University.



## BOOK REVIEWS.

*A Documentary History of American Industrial Society.* Edited by John R. Commons, Ulrich B. Phillips, Eugene A. Gilmore, Helen L. Sumner, and John B. Andrews. Prepared under the auspices of the American Bureau of Industrial Research, with the coöperation of the Carnegie Institution of Washington. With preface by Richard T. Ely and introduction by John B. Clark. Cleveland: The Arthur H. Clark Company, 1910—10 Volumes.

Volumes I and II, "Plantation and Frontier," by Ulrich B. Phillips. Volumes III and IV (with Supplement), "Labor Conspiracy Cases, 1806-1842," by John R. Commons and Eugene A. Gilmore.

From the General Preface to the series, one learns that this somewhat ambitious work originated with Professor Richard T. Ely of the University of Wisconsin, through his own experience in attempting to make an extensive collection of material upon the history of labor in the United States. Finding the task beyond the power of one man to accomplish, he finally succeeded, in 1904, in organizing the American Bureau of Industrial Research, for the purpose of preparing a complete history of American industrial society. He secured as collaborators those whose names now appear as editors. Through their efforts, with the assistance of others, and with the coöperation of the Carnegie Institution, a remarkable collection of material upon American industrial history has been made.

With this large amount of material gathered, much of which was rare, it was but natural that there should arise a feeling of obligation to print some of the most important documents for the benefit of students to whom the collection itself was not accessible. Four volumes have now been published as the first fruits of that praiseworthy effort.

Whether or not one can go as far as Professor Clark, in his General Introduction, that American history reflects the larger history of the world with respect to the connection between eco-

conomic motives and historical events, is immaterial. It is also unnecessary to accept his plea that out of such material as this it is possible to contribute to a philosophy of general history. It is not necessary to believe in the so-called "economic interpretation of history" to recognize the importance of the economic side of American development. A series like the present one is primarily of value to students of economics, but it is of almost equal value to students of history, and in particular to students of American history. The service which it renders is dependent largely upon the methods which have been followed and the skill with which the work has been done.

The first two volumes are entitled "Plantation and Frontier." They are edited by Professor Ulrich B. Phillips of Tulane University, well known through his researches in Southern history. It was his aspiration, as expressed in his Introduction, "to present through the documents a reasonably full view of southern industrial society." The material is somewhat elaborately classified in twenty-three sections under such headings as "Plantation Management," "Plantation Routine," "Overseers," "Negro Qualities," "Immigrants," "Frontier Settlement," and "Frontier Society." Within these sections upwards of 400 documents varying in length from a few lines to many pages, have been grouped in over 170 subdivisions. These subdivisions, however, were made with reference to the material selected, and do not in any sense constitute a logical analysis of the subject in hand.

This scheme of arrangement is full of suggestion to the student of Southern history. It reveals a knowledge of the subject that augurs well for the "History of the South" which it is rumored that Professor Phillips is some day going to write. But to the mind of the present reviewer, therein lies the fundamental weakness of these volumes. Many of the documents are brief, or merely extracts. It is evident that they have been chosen to illustrate conditions or phases of development which are perfectly clear to the editor. But to the average student they are in many cases misleading and sometimes they are unintelligible. For example, one item in the eyes of the editor "is a gem of special value." It is an advertisement of seven lines from the *Virginia Gazette* of 1767. Its substance is



"WANTED SOON \* \* \* A Farmer who will undertake the management of about 80 slaves, all settled within six miles of each other, to be employed in making grain." Taken by itself, the advertisement would have little meaning, and even with the editor's supplementary title of "An advertisement for a riding boss to manage a scattered slave peasantry," and his previous explanation that it suggests "An answer to the question what régime could replace the plantation system in case of its abandonment," it is of doubtful value, or liable to be misunderstood. A single item of this sort may illustrate something—but what? And to what extent did these particular conditions prevail?

Other documents, however, are of a different type. The first one of the collection—under "Plantation Management"—"Standards of Managerial Duty," consists of the instructions given by an owner to his agent in 1759 for the management of his plantation. Such documents, and there are many such, are really illuminating.

Another serious criticism arises out of the order of arrangement of the various documents. Under "Types of Plantation," eleven items, covering only thirteen pages, are divided as follows: *Virginia tide water*, 1767 and 1774; *Virginia Northern Neck*, 1771; *A rice estate on North Carolina coast*, 1825; *A sea-island cotton estate*, 1825; *Georgia uplands*, 1800; *Red River establishment*, 1849; *Shenandoah régime*, 1823 and 1799; *East Tennessee*, 1823; *A vast sugar estate*, 1863. To one who is not familiar with the whole subject, such scattered and irregular items are of little service and are liable to misinterpretation. Indeed, the reviewer has found the greatest value of these two volumes in the outline presented by the editor in his Table of Contents and in the short sketch in the Introduction, together with such of the documents as are frankly descriptive. When the editor writes, as it is hoped he will write, his economic and industrial history of the South, then this series of selections will be materially helpful in illustrating various phases and conditions. In the meantime, some of the documents will be useful, but the collection as a whole will hardly serve the purpose for which it was intended.

The third and fourth volumes, covering the so-called "labor conspiracy cases," differ radically from the first two volumes both in subject and in method of treatment. In the opinion of the present reviewer, they merit unqualified praise.

In an excellent introduction, based upon an article he has recently published, Professor Commons, of the University of Wisconsin, has traced the stages of American industrial society from the guild to the factory. Accepting his fundamental principle that it is the extension of markets rather than the technique of production that determines the organization and policies of industrial classes, it is a comparatively simple matter to place the present volumes in their relative position in our industrial history. With the increase of population and improved means of transportation came a widening of the market, and the retail merchant began to engage in wholesale trade. Price rather than quality was the determining factor, and as wages were the important element in fixing the price, the struggle between capital and labor was begun. The merchant was interested in reducing wages, but the wholesale price was made before the work was done, and if the workmen took advantage of this condition and demanded higher wages after the order was accepted, the employer was compelled to fight.

This was the situation when the journeymen shoemakers of Philadelphia organized a strike in November, 1805, were indicted for conspiracy, and were brought to trial in 1806. The case is known as the Philadelphia Cordwainers, 1806, and it was the first of the cases turning upon the important question of the "open" or "closed" shop. There were eighteen cases in all, culminating in 1842 with the decision of Mr. Justice Shaw of Massachusetts in *Commonwealth vs. Hunt*.

These eighteen cases comprise the Labor Conspiracy Cases which are the subject of the volumes under consideration. Four of the cases are given only by title, with reference to reports that are accessible in most public law libraries. Six other cases were reported by stenographers or the counsel employed and were privately printed and sold to the public. Most of these reports are rare, in some instances only one copy being found in existence. These reports are here reprinted practically *verbatim*, as



the editors have taken only the permissible liberty of cutting out legal repetitions and irrelevant matter, and have indicated such omissions with brackets or footnotes. In the cases where there is no report, newspapers have been searched, and so much as pertains to the actual progress of the trials is here reprinted.

From the statement that has been made it is evident that these later volumes differ markedly from the first two volumes of the series, in that the compilation of material has been exhaustive. So particular have the editors been in this regard, that as they were compelled by limits of space to cut out from the fourth volume the two cases of the Thompsonville Carpet Weavers, 1834-1836, they have published a supplementary volume of 136 pages containing these cases.

All of the cases are more or less alike, and from the few that have been reported in full, it is possible to obtain a clear understanding of the rest. Aside from the inherent value of the legal doctrines involved, it is possible to extract from the detailed reports a vast amount of information. In the testimony and cross-questioning of witnesses, and in the arguments of counsel, are to be found detailed descriptions of the industrial and commercial conditions of the time.

If the editors fulfill their promise and in future volumes present contemporary material, bringing out the labor movements behind these conspiracy cases, they will increase the great obligation under which students of the subject have already been placed.

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*My Life in China and America.* By Yung Wing, A.B., LL.D. (Yale), Commissioner of the Chinese Educational Commission, Associate Chinese Minister in Washington, Expectant Tao-tai of Kiangsu. New York: Henry Holt & Co., 1909—8vo., pp. vi, 286.

There are enough elements of interest in this autobiography to justify its place among the most important books of the year. Yung Wing was born in a village on one of the islands in the Pearl River estuary near Macao, when Europeans in China were

strictly confined to that little settlement and to the factories at Canton, their trade being conducted by chartered companies, as in the Hansa towns during the fifteenth century, under no treaty sanctions. At the age of seven he was taken to Macao to be taught English by the wife of a missionary. It was the boy's first experience with foreigners.

"On my untutored and unsophisticated mind," he writes, "she made a deep impression. As she came forward to welcome me in her long and full flowing white dress, surmounted by two large globe sleeves which were fashionable at the time and which lent her an exaggerated appearance, I remember most vividly I was no less puzzled than stunned. I actually trembled all over with fear at her imposing proportions—having never in my life seen such a peculiar and odd fashion. I clung to my father in fear. Her kindly expression and sympathetic smiles found little appreciative response at the outset as I stood half dazed at her personality and my new environment. For really a new world had dawned upon me."

It is an interesting fact that from his transfer a few years later to a school in Hongkong until his graduation at New Haven the boy remained under the influence of Yale teachers. Two of them, S. R. Brown and William A. Macy, famous missionaries in their day, were instructors in the Morrison Educational Society School, and when the former of these took Yung Wing with him to America, he was naturally placed under a Yale preceptor, Rev. Charles Hammond, principal of Munson Academy, whence he found his way to Yale. His desire to remain in America prompted him to refuse an offer from some British merchants in Honkong to continue his studies in Edinburgh, and when he had secured his college degree with the class of 1854—not without struggles against poverty but with high distinction—he had acquired enough of the spirit of that institution to determine to carry it back to his countrymen.

The far-reaching results of this resolve can hardly be overestimated. Because of his conviction that America rather than Europe provided the type of education which China needed, Yung Wing secured from his government a grant to defray the cost of school and college training in this country for 120 selected boys of about twelve years of age, and largely through their influence America has since remained the Mecca of her progressive and eager youth.



In many respects the creation of this Educational Commission of 1872, which will ever be associated with the name of Yung Wing, was one of the most remarkable steps ever taken by the rulers of China. When we recall the intellectual self-sufficiency of that empire and the fact that during its long history it had never acquired any item of importance from other nations, we are not surprised that it needed a dozen or fifteen years for the young enthusiast to gain a hearing for his plan. The marvel is that he should have succeeded at all. He attributes his eventual good fortune to the support of the great Viceroy Tsêng Kwoh-fan, whose victorious career in the Taiping and Nienfi rebellions had made him by 1865 the most powerful man in China, and whose abilities and vision of the future surpassed that of his contemporaries in high position. To secure the endorsement of a man like this was actually more effective than to apply to the Throne itself, for in affairs of the first importance the Imperial House of China cannot move without the coöperation of its great satraps.

The history of the Commission is probably familiar to most readers of this review. The author's account of its inception and demolition is pregnant with meaning to those who understand the character of the Chinese literati and can estimate properly the insidious influences of bigotry and corruption dominating their political influence. Here State polity shrinks to a mess of private intrigue conditioned only by fears of jealous superiors and the abiding prejudices of the populace. Yet there are exceptions. A few at the top are not only disinterested and patriotic, but capable of great breadth of view, and there were always those who would at least listen to Yung Wing. His hour of triumph arrived when, at last, he gained the ear of Tsêng Kwoh-fan. Though in theory China is autocratically governed, the control in great crises has ever been given to the man, whatever his origin, who could successfully cope with the situation. And such was the man he found. In order to suppress the most terrible rebellion modern China has ever known, the revenues of seven or eight provinces had been handed over to Tsêng, who

"was literally and practically the supreme power of China at the time. But true to his innate greatness he was never known to abuse the almost unlimited power that was placed in his hands, nor did he take advantage of the

vast resources that were at his disposal to enrich himself or his family, relations or friends. Unlike Li Hung-chang, his protégé and successor, who bequeathed 40,000,000 taels to his descendants after his death, Tsêng died comparatively poor and kept the escutcheon of his official career untarnished and left a name and character honored and revered for probity, patriotism and purity. He had great talents but he was modest. He had a liberal mind but he was a conservative. He was a perfect gentleman and a nobleman of the highest type."

Yung Wing's first audience with the great man in 1863 showed that he was not then prepared to discuss proposals for an ambitious educational scheme. But he wanted rifles made in China, and the graduate of Yale was forthwith despatched to secure the requisite machinery in New England. When the workshop near Shanghai was in operation a mechanical training school was established "as a corollary to the arsenal," and presently the great hope of a lifetime was fulfilled by Tsêng's endorsement of Yung Wing's educational proposition, and in 1871 a *Hanlin* scholar was associated with him to organize the now famous Commission. Unhappily, upon the death of the great statesman in that year, the consummation of the design fell to Li Hung-Chang.

"Li," he says, "was of an altogether different make-up from his distinguished predecessor and patron. He was of an excitable and nervous temperament, capricious and impulsive, susceptible to flattery and praise or, as the Chinese laconically put it, he was fond of wearing tall hats. His outward manners were brusque but he was inwardly kind-hearted. As a statesman he was far inferior to Tsêng; as a patriot and politician his character could not stand for a moment before the searchlight of cold and impartial history."

Yielding to reactionary pressure, Li allowed the Chinese students to be recalled from America in 1881, ostensibly because they were becoming demoralized, actually because of the misrepresentations of one Wu Tsz-tung, a malignant Confucianist sent out as Yung Wing's coadjutor. Yet on receiving the latter in Tientsin when all was over, Li with magnificent effrontery rated him for obeying the imperial mandate, intimating that it was only intended to be observed in a *Pickwickian* sense. Such was Li, and such is still the political fashion of Chinese politics.

After a residence of thirteen years in America, the author was once more summoned to China, upon the termination of her



war with Japan, to discuss plans for a national loan with the Viceroy, Chang Chi-tung, the third of the great trio who controlled the national destinies outside of the Palace until the Boxer uprising. But, says the writer,

"in Chang Chi-tung I did not find that magnetic attraction which at once drew me to Tseng Kwoh-fan when I first met him at Ngan-Khing in 1863. There was a cold, supercilious air enveloping him which at once put me on my guard. He was as reticent and absorbent as a dry sponge."

Upon Chang's transfer to Wuchang, Yung Wing was not asked to follow him, nor did he receive further encouragement from Liu Kwan-yih, the new Viceroy, at Nanking. Without a patron one is helpless and unprofitable in political life in China, so the best-equipped man of his years in the empire, whose abilities and integrity had been tested in a dozen important undertakings, was left to his own devices in Shanghai while the reactionary party controlled the country. A project for creating a national bank of China was frustrated by the interference of the notorious Shêng Taotai of Shanghai; another to construct a railway between Tientsin and the Yangtse fell foul of German pretensions to control and exploit Shantung Province. Finally, being involved in the abortive reform movement of Kang Yu-wei and the young Emperor in 1898, the author was compelled to fly for his life to the protection of Hongkong. After a few years of hardship as a refugee with a price upon his head and in constant peril of assassination, he resigned the apparently hopeless task of trying to help his country despite herself and returned to America in 1902.

Though unsuccessful in many plans, Yung Wing possesses the optimism of the true reformer and does not acknowledge failure in his life purpose. He has seen his country awake from a long torpor, and if in the convulsion of change she has sometimes followed false counsels and failed to comprehend the necessity for a consistent policy, he does not despair. He wastes no energy in recriminating those who thwarted his unselfish efforts or in deploring a generation greedy of graft, but with unswerving fidelity to his high ideals looks cheerfully forward to the great future when China shall have taken her place among nations. It gives one a new hope for that future to

reflect that he no longer stands alone in the desert of indifference and dislike, but that scores of his young countrymen whom he first brought to America are now at work remodeling the institutions of China and yet other hundreds have already come over here consecrated to the same high purpose and determined, with the approbation now of their authorities, to carry out the programme of this pioneer of progress in the Far East.

F. W. WILLIAMS.

Yale University.

*University Addresses.* By William Watts Folwell. Minneapolis: W. H. Wilson Company, 1909—pp. 224.

Dr. Folwell has in the present work reprinted four educational addresses, viz., his "Inaugural Address" as president of the University of Minnesota, delivered in 1869; his address on "The Minnesota Plan," delivered before the National Educational Association at its annual convention held in Minneapolis in 1875; third, his address on "The Secularization of Education," delivered before the same association at its annual convention held in Saratoga in 1881; finally, his baccalaureate address on "The Civic Education," delivered in Minneapolis in May, 1884, when he had resigned the presidency of the University of Minnesota, and he was looking forward with great expectations to his work as professor of Political Science, hoping to build up a strong department in that institution. The addresses have a few additions in the form of insertions, recently written and printed in smaller type, giving later impressions and reviewing subsequent developments.

This modest little book is a valuable contribution to our educational history which no one interested in it can afford to neglect. It brings vividly before us the aspirations, the large plans, the great achievements and the sacrifices made to the common good by a noble race of pioneers. Early civilization in its progress always means the giving of self for others; the yielding up of personal ambitions that future generations may have advantages which the pioneers renounced for themselves. This all becomes clear to the reader of Dr. Folwell's addresses; particularly if the reader knows him personally, as do nearly all



American economists of the older generation, who remember his active participation in the meetings of the American Economic Association, and who think upon him with warm personal feelings in his retirement in his old age.

Dr. Folwell had the mind and the training for excellent research and investigation in his special field of economics and political science, and could have won distinction in one of several different lines. But when we look through a sketch of his career, we see that other pressing work required his attention more urgently. Dr. Folwell has been first of all, a good citizen. Thus, the admirable park system of Minneapolis owes much to him as a commissioner of parks; also, he has done noteworthy work as president of the Minneapolis Society for Fine Arts for ten years. Charities and correction in Minnesota have also had his attention. But his chief strength has been given to his work as an educator, putting over fifteen years of his life in building up the University of Minnesota from insignificance to great power.

Dr. Folwell's "Inaugural Address" in 1869 is so broad, so catholic, so farsighted, that even now it sounds thoroughly modern. Public service and scholarship are emphasized. The following passage is noteworthy:

The time is not distant when a Department of Public Health will be established in all universities, which will teach all that can be known as to the causes of epidemics, the sanitary conditions and control of cities, hospitals, asylums, prisons, school buildings, dwellings and all constructions and enclosures.

The time was more distant than he anticipated, but the University of Minnesota did establish such a department, unfortunately discontinued. Dr. Folwell adds in one of his insertions:

This was a move to the rear. The University of Minnesota may some time be boasting that she was the first in America to open a "Department of Public Health."

Dr. Folwell was also a prophet working for the realization of his own prophecies in respect to the Civil Service, looking upon the State University as especially designed to elevate that service. The following passage is of special historical interest:

It may be expecting too much of the near future, but it is still gratifying to hope, that it [i. e. the University] may give to the American states and nation, some such system as that already long in use in England, and as proposed in Congress by Mr. Jenckes, of Rhode Island, a "civil service system" which will require candidates for public preferment to prove their fitness for the offices aspired to by passing examinations before impartial boards. If ever that day shall come when the state shall make such demands upon those whom she calls into her service, they in turn, will require with a certain justice that she furnish the instruction. If she do this at all, she must do it generously and freely, for there must never be in a republican country any position of honor or trust to which the humblest citizen may not aspire.

"The Secularization of Education" rebukes narrow sectarianism and fights vigorously the proposition that the State University is "godless." Dr. Folwell holds that subsequent experience has demonstrated the soundness of his position.

The address on "The Civic Education" has a pathos because it was denied to Dr. Folwell to realize his large plans for the development of a great department of the social sciences, but it is of value as showing some of us of a younger generation that in our up-building work in American universities we have gone farther than the fathers, not so much because we have a larger vision as because we have had larger opportunities as a result of their self-sacrificing toil. "We have entered into their labors."

RICHARD T. ELY.

University of Wisconsin.

*Housing Reform.* By Lawrence Veiller, New York: Charities Publication Committee, 1910—pp. xii, 213. \$1.25.

Social workers of recent years have been fortunate in having text-books penned by men and women of live personality and a superabundant optimism which will not be suppressed in their writings. Erstwhile dry reading consequently has become enlivened by a personal touch which one cannot readily recall as characteristic of any similarly technical literature. In the present text, for example, the discriminating reader will be edified by the gentle humor which impels our author to stop ever and anon in his course to hurl a final judgment at any mooted problem of human interest that comes within wireless range.



Mr. Veiller, however—or moreover, as one pleases—is adequately informed on housing reform. The pages of his book, so far as they are confined to the practical phases of that subject, are reliable and to the point. With the accompanying “Model Tenement House Law” (same author, Charities Publication Committee, \$1.25), they form a proper and welcome guide to those interested in housing problems. There is a remarkably good chapter on the little understood technique of getting social measures through the legislature.

Necessarily a practical handbook must deal with “things as they are.” It is well that we have returned along the course of natural living far enough to insist on reasonably pure air and some degree of daylight in all human habitations. And it is desirable that such progress as has been made should become standard practice through the spread of the text-books before us and by the activity of the National Housing Association and similar local committees. But substantially all American housing reforms have stopped short of the one *sine qua non* of rational living—sunshine. No prosperous householder nowadays will deny his children sunny rooms to live and play in. No social worker, moving into the tenements, willingly takes up with sunless quarters. And among the normal tenement population any day natural selection may be seen at work, urging the stronger families like healthy plants into the air and sunshine of the upper and corner dwellings; while the weaklings drift unconsciously and unresistingly into what is left—into the sunless lower-floor apartments with their cheaper rents. There are doubtless many exceptions, as the heavy lady who can’t climb the stairs, but the rule holds good. Once it was a matter of congratulation that the people had been driven out of the cellars; we must go a step further and get them into the sun.

Doubtless Mr. Veiller would say that this proposition is impracticable. With considerable first-hand knowledge of the tenement population to support our contention, however, we believe that the modern unsunned home is about as justifiable, and gives about as practical results, as would a garden with the plants huddled into deep, closed squares. The farmer has learned that the maximum of efficiency in plant distribution is

the long, narrow row. It is not hard to conceive similarly of even a crowded city so divided into north and south parallel rows of narrow dwellings, instead of the present block form, that every apartment, perhaps every room, could have some sunshine every clear day in the year. If east and west streets passed under these rows, leaving the rows continuous, there would be ample room for the north and south avenues and parkways, without lessening materially the present percentage of surface deemed practical to build upon. Where space is hopelessly congested, the ground and lower floors might be used for stores and warehouses, and the city of homes built upon these as a foundation, with congregate elevators at intervals, and a concourse over the roofs to the separate houses.

This, of course, is not the place to enter into the fascinating details of city planning. We must be content to register our belief that fifty years hence the sunless home will be as abhorrent a remnant of old-time misdirected human culture as is to-day the dumbbell tenement. It is no longer enough that human life brought into the city shall be guaranteed a fighting chance to exist; it must be given the chance to thrive. Any other thesis is social and economic folly.

H. S. B.

*The Diminished Purchasing Power of Railway Earnings.* By C. C. McCain. New York, 1909—pp. 111.

This book is a reasoned attempt to justify and prepare the public mind for increases of railway freight rates. To demonstrate the necessity for these increases, the writer cites many statistics proving the upward trend of money prices and the upward trend of interest rates (in money). The emphasis is laid on the increase in the prices of those materials which railroads as such have to buy and the increased interest paid on railroad bonds.

Such facts by themselves, however, prove nothing. One might go on indefinitely citing statistics to show higher interest rates, higher wages, and higher cost of materials, without demonstrating that rates should be raised. Because the general level of



prices is rising, it does not follow that all charges for goods and services should rise in the same proportion, or even, necessarily, that all charges should rise. In some industries the progress of invention is more rapid than in others, and in these industries, if the general level of prices remained stable, the tendency would be for charges to fall. With the general level of prices rising, the charges in such an industry might rise more slowly, remain stationary, or even fall. If railroad transportation is such an industry; if improvements in engines and in rails, increasing size of cars, and other changes, tend to offset the increased costs complained of, to a greater extent than in agriculture and the bulk of industries,—then the need for higher rates is not established. Further proof becomes necessary. It should be shown, not only that prices of needed material and labor have risen, but also that these higher prices are not sufficiently offset by improvements, and (for railroads are operated under the law of increasing returns) by increased traffic. It is not intended to assert that the author's conclusions are false, but merely that they are not proved.

The argument would be further strengthened, were it pointed out that even the same net money income and therefore the same money dividends constitute a less real income to stockholders when the purchasing power of money over consumable goods has largely decreased, as well as its purchasing power over railroad supplies.

HARRY G. BROWN.

Yale University.

*Shippers and Carriers of Interstate Freight.* By Edgar Watkins, of the Atlanta Bar. Chicago: T. H. Flood & Co., 1909—pp. 578.

Enforcement of the rights of shippers and carriers, under the Interstate Commerce Act and its various amendments since 1887, has developed gradually a special branch of law with which the legal profession in general has little familiarity. In consequence, there has arisen a demand for books that would discuss fundamental principles, codify statutes and their interpretations, and furnish guides to those who are entering the field for the first

time. The volume under review is one of a number of books of this character. Published late in the year 1909, it includes most of the interpretations which have been made of the Hepburn Act of 1906, and thus provides an up-to-date handbook of interstate commerce law and practice. It is compact and logically arranged, its citations are well selected, and the general handling of the entire field is intelligent and satisfactory. Its exhaustiveness and its convenience for reference make it for the purpose stated the best book now available.

Under appropriate headings, which follow logically the legal principles involved in transportation service, are presented decisions of federal and state courts, and opinions and methods of procedure of the Interstate Commerce Commission. State laws affecting interstate commerce receive consideration, and federal statutes which bear a close relation to the problems of railroad regulation, such as the Anti-Trust, Safety Appliance, Employer's Liability, Arbitration, Hours of Service, and Corporation Tax laws, are discussed. These latter acts are given in full in an appendix.

FRANK HAIGH DIXON.

Dartmouth College.

*"Men versus The Man."* By Robert Rives La Monte and Henry L. Mencken. New York: Henry Holt & Co., 1910—pp. 252. \$1.35.

This book, a series of twelve letters said to be "actual," debating the general principles of collectivism, pro and con, is an intensely interesting one. It is written in brilliant style by men well equipped.

Yet the book comprises no novel ideas. Its value and interest lie in its being typical and prophetic. Everywhere, just now, prevails debate of social philosophies. Periodically, mankind incurs an excitation like glass under cat's fur. Each molecule of society becomes electrified, positively or negatively. Its hitherto placid chemical existence is invaded by an electrical charge. It departs from its normal vocation and assumes new reactions with its neighbors, intense, brilliant and far-reaching. Each takes



sides, positive or negative, and flocks to its respective pole of concentration.

To-day, in all lands, men are taking sides on the question of collectivism. They argue vehemently. But the one never converts the other. Neutrals may be drawn to either pole, it is true; and at present the gravitation is plainly toward the collectivist's philosophy. But each, the pole once being reached, becomes himself polarized and intensified. He attracts or repels others, but he no longer vacillates.

From Mr. Mencken's letters this fact shines plainly. Forced to exclude from his views all admission of collective interaction, lest he lend color to the insistent demands of the socialists, his statements, albeit brilliant, becomes hard, uncharitable, unbalanced and grossly inconsistent with themselves, as also with obvious facts. To him the years spanning our growth from the days of no carriage or communication but by horse and sail, no fire or light but from tinder-box and taper, no "trusts," no anæsthesia or antiseptis, no Red Cross and no Hague tribunal, contain no forces coercing human life except those same biological, evolutionary ones which consumed an eon in molding a Neanderthal man into a Moses. Man's rewards to-day, he believes, are the exact result of heredity and effort. His environment is natural, not human. Opportunities are everywhere equal. Institutions, the chief product of human evolution, have no place in his philosophy.

Mr. La Motte, on the other hand, idealizes and generalizes. The hard arguments of his opponent are not met by even harder facts, but by philosophies. The discussion drifts further and further from the real issue, or any issue at all. The two men, while following each other's language, diverge more and more in idea. Each talks less and less to the other, and more and more to himself.

Thus the socialist, replying to Malthus' mathematical law with references to Nietzsche and "beyond-men," typifies his "comrades" of the better class. The devoted band of collectivists, with hand clasped in hand, with faces upturned, inspired by great ideals, fundamentally right, yet wanders gropingly, its feet

clogged in the mud of the Marxian economics, its eyes befogged with philosophies.

Between the two opponents, one could choose to follow only the latter. But the path leads through international quagmire before higher, firmer ground may be reached.

SIDNEY A. REEVE.

New York City.

*Social and Industrial Conditions in the North during the Civil War.* By Emerson David Fite. New York: The Macmillan Company, 1910—pp. 318. \$2.00 net.

Professor Fite furnishes a needed corrective to the generally accepted views of the history of the Civil War, and presents a real addition to our knowledge of the period in his recent book. He has broken away from both the intrigue of politics and the record of the army and navy. He has few words of inspiring patriotism and no discussion of the law or ethics of secession. Instead, he has read widely in the literature of business and trade in order to answer the question long asked by many students as to what was going on in America in the sixties besides the Civil War.

With the older historians and the adherents of the one-time orthodox school the war for the Union was not only the center of the picture but the whole of it. That man lived on war alone is the logical inference from their writings. Few of them even considered whence came the millions that Chase borrowed or collected through his revenue officials. Before the war the United States had only the most rudimentary knowledge of taxation. Property values had always been low and the nation had not been aroused to great efforts since the Revolution. Yet within four years it multiplied its taxing power by nine, and lent to the government thousands of millions more.

In his earlier studies<sup>1</sup> which prepared the way for this volume, Mr. Fite hinted at the answer. Money for the struggle did not come from patriotic zeal but from agriculture, manufacture,

<sup>1</sup>The Agricultural Development of the West During the Civil War, in *Quarterly Journal of Economics*, xx, 259-278; and The Canal and Railroad from 1861 to 1865, in *YALE REVIEW*, xv, 195-213.



trade. He had found that the war had not checked the prosperity of the North and Northwest as it emerged from the panic of 1857. He had begun to suspect, it appears, that an economic history of the United States might be written without the Civil War and without injustice.

The materials upon which the preliminary studies as well as this have been based have heretofore belonged more to the economist than to the historian. They lie scattered in the files of the newspapers and trade journals, in the places least likely to be reached by the historian on the outlook for politics. They have accuracy and significance the greater because of their informality and unconscious honesty. The writer of a crop report may be but partially informed, yet his mere existence bears witness to the status of the conditions which he tries to describe. The trade paper or the institutional organ may be crude and partisan without weakening its value as a source to the discriminating historian.

With great labor and industry, Mr. Fite has collected his facts. His footnotes refer to a wider range of sources than has been seen in a recent work. How accurately he has used them cannot always be said, since he has taken most of the historians unawares in exploiting materials whose existence they have commonly ignored. But his general results inspire great confidence. His thesis is that war politics did not subvert the social and industrial bases of American life. Taking up these bases topically, he shows in eleven chapters the luxuriant economic development of the years of struggle. Agriculture, mining, transportation, manufacturing, commerce, capital, and labor are the most important of his economic headings. He presents the social situation under education, luxuries, amusements, and charities. Instead of being the whole existence of the nation, "War was a stimulus to intellectual life. \* \* \* Intellectual leaders clung to their tasks with admirable fidelity and gave utterance to their thoughts with perhaps more zeal than ever.

\* \* \* No matter how terrible the day on the Southern battlefield, no matter how great the excitement in the North, the public school bell rang out as usual in the first week in September."

In a work of so great detail there is room for differences of opinion, but slips or errors are extremely rare. There is serious doubt whether the attitude of New Jersey was "legally \* \* \* unassailable" when she denied the right of Congress to intervene, under the inter-state commerce clause, to mitigate a monopoly in transportation (p. 174). The McCormick reaper, instead of appearing in 1848 (p. 89), was invented in 1831, and the first machines were sold in 1840. The reform in the currency brought about by the national bank act (p. 115), did not materially affect conditions during the period of the war.

Because of the topical arrangement and the diversity of facts that crowd its pages, the book is not likely to make a strong appeal to the indifferent reader. It confines itself severely to its subject, and the subject is not well enough known to be popular. But students and teachers will study it with care, and most of them will have to revise their knowledge and reshape their analyses of the wartime life because of its strong new light.

FREDERIC L. PAXSON.

Ann Arbor, Michigan.

*Poor Law Reform. Via Tertia. The Case for the Guardians.*

By Sir William Chance, Bart. London: P. S. King & Son, 1910—pp. 95. Cloth, 1s. 6d. net; paper, 1s. net.

The object of this book is to oppose the more radical of the many changes in the administration of public relief proposed by the notable report of the Royal Commission on the Poor Laws. The propaganda emanates from the British Constitution Association, of which the author is a leading member; and, in keeping with the objects of that association, it resists the tendency toward socialism which it finds in the proposed enlargement of the functions of the public assistance authorities, and the encroachment upon the principle of local self-government involved in the proposed transfer of relief work from the elected local guardians to committees appointed by the county councils. While taking this conservative position, the author has long been active in work for the improvement of the administration of the poor law and discusses the problems involved with intimate



knowledge, and with a desire for substantial progress. The minority report of the Royal Commission is passed over rather lightly as too radical to be taken seriously.

DAVID I. GREEN.

Charity Organization Society,  
Hartford, Conn.

*Women and the Trades.* By Elizabeth Beardsley Butler. New York: Charities Publication Committee, 1909—pp. 440.

Under the above title appears the first volume of the findings of that unique piece of social investigation, subsidized by the Russell Sage Foundation, known as the Pittsburg Survey. The volumes are edited by Mr. Paul U. Kellogg, Director of the Survey, who says in his preface to the book: "This Survey . . . attempted a diagnosis of an American industrial district along social and economic lines, and included within its scope such subjects as sanitation, wages, hours and organization of labor." The study is confined to Pittsburg, where a civic commission has since been appointed by the mayor to report on practicable measures for improving the living conditions of the working people. But its influence is bound to be nation-wide, and everywhere helpful. There is probably nothing in the United States with which to compare this Survey. And even its English counterparts, the Royal and Parliamentary Inquiries, are attempted only with the backing of the state.

The keynote of this book, to which it is everywhere attuned, is its eminent fairness, its judicial tone, its fine poise and sanity. Miss Butler herself admirably sums up the motive underlying her work: "My effort has been to study the conditions growing out of the trade itself, not out of the foibles or the unkindness of any individual, and to present a sketch of the trade process in terms of the life of the workers and of its place in present-day industrial methods." Agricultural and professional workers and domestic servants are excluded from consideration, only those women-employing industries being included "in which the units are organized on factory lines." Some five hundred shops, factories, laundries, department stores, telegraph and telephone offices were inspected, employing in the aggregate about twenty-

two thousand women; and careful inquiries were made of employers, employees, and outside parties familiar with the respective trades. A large part of the book is devoted to a comparative study of the working conditions in the various industries, with a careful summary as to wages, hours, health, "economic foothold," and social life of the working women. Four appendixes and a good bibliography help to complete a volume which the reader lays down with a feeling that he has been following a guide whose step is sure and strong.

While the author is careful not to draw too sweeping conclusions, certain facts appear in strong relief against the background of her narrative. First, the number of women in industry, relatively to men, is on the increase in the field investigated. Second, this increase is due to the substitution of machine for hand labor, with its resulting displacement of male handicraftsmen by female operatives. Third, the high speeding of the machines, which causes great increase of nervous tension, causes the speedy breakdown of the operatives. Fourth, this projects itself on the next generation, when these worn-out young women, untrained in home-making, marry and become the mothers of weakly children. Fifth, there is great discrepancy in wages between men and women, those of the latter averaging about one-half those of the former. Sixth, women's wages—below the level necessary for decent self-support—must be supplemented by outside resources, and all too often these are the wages of prostitution. Seventh, the seasonal character of some trades accentuates the hard conditions of the industrial struggle. Eighth, the State Factory Inspector often fails to enforce the plain provisions of the factory law, in matters of working hours, sanitation, seats for employees, guarding of machinery, and the like. This is an old story in Pennsylvania.

Miss Butler arrives at the conclusion that men and women tend to fall into non-competing groups, even when engaged at the same work. This is due to the men's superior strength, endurance, knowledge of the trade, and spirit of craftsmanship. "Analysis shows that in only a few cases are women permanent active competitors with men for identical work, within the limits



of their active working life." A better enforcement of the factory law; a higher standard of business ethics, that will not tolerate high speeding, long hours, and hard-working conditions generally; a living wage; and, as a result of all this, a life "enriched by a reasonable amount of leisure" with proper means of relaxation,—less than these no community may tolerate, the author believes, and expect to escape the consequences.

J. LYNN BARNARD.

Philadelphia School of Pedagogy.

## RECENT LITERATURE.

*Historical Essays.* By James Ford Rhodes, New York: The Macmillan Company, 1909—pp. 334. Though all but two of the essays in this volume have been published elsewhere, they are well worth gathering into a volume. The first three, on "History," "Concerning the Writing of History" and "The Profession of Historian," might well be made compulsory reading for every graduate student in the field of history. Most of the other papers are sketches of the methods and work of great English historians of modern times. Those dealing with Gibbon and S. R. Gardiner are perhaps the most interesting and substantial. All readers of the YALE REVIEW will note with pleasure the frank appreciation of Edward Gaylord Bourne and Mr. Rhodes' acknowledgement of the great aid given him by Professor Bourne while Mr. Rhodes was writing his "History of the United States since the Compromise of 1850." A well-deserved tribute is paid to E. L. Godkin as a force in American public life and journalism. The essays on "Newspapers as Historical Sources," on "The Presidential Office," "Hayes' Administration" and "Who Burned Columbia" are well worth rescue from the limbo of magazine literature. It may well be a matter of regret that we have not in America more historians whose occasional papers would stand the test of collection and republication.

*Social Reform and the Reformation.* By Jacob Salwyn Schapiro. Columbia University Studies in History, Economics and Public Law, Vol. XXXIV, No. 2. New York: Longmans, Green & Co., 1909—pp. 160. This study aims to present the economic side of the great German revolution which has interested the world chiefly as a religious movement, and proposes a standard of critical impartiality which the author misses in the work of his predecessors. The essay seems ambitious when one considers the depth and breadth of the revolution. It is impossible, in the space which the author allows himself, to examine carefully the complex interactions which characterize this period of history; and the author too often expresses a current opinion



without a critical analysis of its accuracy. So, for example, the author lends himself to the traditional view that the Roman law seriously injured the status of the peasant, without considering the reasons which economic historians such as Grossman, Fuchs and Gothein have given for modifying our judgment in the matter. In the second part of the book the author prints translations of a number of the schemes of reform (the Reformation of Emperor Frederick III, the Twelve Articles, etc.), and for this service both teacher and student will be grateful.

*Freight Rates and Manufactures in Colorado.* By J. B. Phillips, University of Colorado Studies, 1909—pp. 62. Professor Phillips has contributed a chapter in economic history, giving valuable side-lights upon the natural results of railway rates made by railways in their own interests. The work is based upon the report of the special railway committee appointed by the State legislature in June, 1885, for the purpose of ascertaining the attitude of the railways towards the establishment of manufactures in Colorado. The first part of the book is devoted to a summary of the evidence on the more important industries which were actually started but which were abandoned owing to the discrimination in rates against the State immediately put in force by the railroads when the success of the plants seemed assured, and the latter part is devoted to a statement of actual rate schedules on various classes of traffic showing the rate from California and from eastern points to Denver and Colorado common points. In connection with the rate schedules there is an analysis of the testimony of the freight agents who appeared before the committee showing the reasons which actuated the railroads in making the discrimination. In brief, the evidence shows that, in applying the principle of rate-making known as "what the traffic will bear," the railroad found it more profitable to prevent the growth of manufactures in Colorado, in order to obtain the long long haul traffic from the east on manufactured goods, and at the same time to retain the business growing out of the shipment of raw materials to the east for manufacture there and for direct consumption. In some instances the situation was made possible by the combination of the railroads, in other by the joint action

of the railroads and eastern manufacturers. Taken as a whole, the book, and the evidence on which it is founded, is an important contribution in favor of the State and national regulations of railways.

*A History of Modern Banks of Issue. With an account of the economic crises of the nineteenth century and the crisis of 1907.* By Charles A. Conant. Fourth edition. New York and London: G. P. Putnam's Sons, 1909—pp. xi, 751. \$3.00. Although this is the fourth edition of Conant's "Modern Banks of Issue," it is the first time that the book has had a general revision. The first two editions appeared scarcely six months apart in 1896. The third edition, which appeared in 1908, made no attempt to bring the narrative down to date, and was in fact practically identical with the first and second editions except for the omission of the last chapter on "The Advantages of a Banking Currency" and the addition of a chapter on "The Crisis of 1907." The present edition is a real revision. The whole book has been brought down to date, and extensive additions have been made, particularly in the chapters on Russia, northern and southern Europe and Latin America; the discussion of banking in the East has been expanded by the addition of two new chapters on banking and exchange in Japan, Corea, and the Orient. In order to make the book purely narrative, the author has omitted from this edition the chapters on "The Theory of a Banking Currency" and "Crises and their Causes." Further description of a work so well known is unnecessary. As now revised, the book furnishes a most valuable and convenient account of the world's experience with banks of issue.

*Modern Christianity, or the Plain Gospel Modernly Expounded.* By John P. Peters, Ph.D., Sc.D., D.D. New York: G. P. Putnam's Sons, 1909—pp. 323. Sermons do not ordinarily fall within the province of the YALE REVIEW; an exception is made in the case of Dr. Peters' little volume, because eight of his twenty-seven discourses relate specifically to the "Social Teaching of Christ." The titles of these short sermons, among which we find "A Dinner Party," "The Servant in the House,"



"Respectables and Publicans," indicate their colloquial style as well as the attempt of the author to apply Christian principles to some of our everyday social problems. Dr. Peters' sermons are homely and direct. They may also seem radical to those who are not in the habit of taking their New Testament literally.

*Manual of Style.* A compilation of the typographical rules in force at the University of Chicago Press, with specimens of type in use. Second edition. Chicago: The University of Chicago Press, 1910—pp. xi, 128, 115. The first edition of this little book, published some three years ago, has proved its usefulness outside the circle of authors and proof readers for which it was originally intended, and has obtained a considerable currency among the writing and printing public. The new edition has been revised and enlarged; it offers in convenient form rules for composition, a glossary of technical terms, and hints to those who contribute to the making of books; and deserves a wide circulation.

*An Inquiry into the Nature and Causes of the Wealth of Nations.* By Adam Smith. With an introduction by Professor Edwin R. A. Seligman. London: J. M. Dent & Sons; New York: E. P. Dutton & Co.,—two volumes, pp. xviii, 441, 455. In this edition, in "Everyman's Library," Adam Smith's classic work is presented in handy form, with an admirable introduction by Professor Seligman, a brief bibliography, and an adequate index.

## BOOKS RECEIVED.

- BRONSON, WALTER C. *English Poems. Old English and Middle Periods, 450-1550.* Chicago: The University of Chicago Press, 1910—pp. x, 424. School edition \$1.15 p. p.; Library edition \$1.65 p. p.
- BROWN, HERBERT D. *Civil-Service Retirement Great Britain and New Zealand.* Washington: Government Printing Office, 1910—pp. 264.
- COMMONS, JOHN R. *A Documentary History of American Industrial Society.* Edited by John R. Commons, Ulrich B. Phillips, Eugene A. Gilmore, Helen L. Sumner, and John B. Andrews. Vol. IV, Supplement; Vol. V, and Vol. VI. Cleveland, Ohio: The Arthur H. Clark Co., 1910—pp. 136; 392; 353.
- DAWSON, WILLIAM HARBUTT. *The Vagrancy Problem. The Case for Measures of Restraint for Tramps, Loafers, and Unemployables: with a Study of Continental Detention Colonies and Labour Houses.* London: P. S. King & Son, 1910—pp. xv, 267. 5s. net.
- DOWNEY, E. H. *History of Labor Legislation in Iowa.* Iowa City, Iowa: The State Historical Society of Iowa, 1910—pp. x, 283.
- EASTMAN, CRYSTAL. *Work-Accidents and the Law.* The Pittsburg Survey. Russell Sage Foundation. New York City: Charities Publication Committee, 1910—pp. xvi, 345. \$1.65.
- ESCHER, FRANKLIN. *Elements of Foreign Exchange: A Foreign Exchange Primer.* New York City: The Bankers' Publishing Company, 1910—pp. viii, 160.
- EVANS, HOWARD. *Sir Randal Cremer, His Life and Work.* Boston: Ginn & Co., 1910—pp. 356. \$1.40 net.
- GARNER, JAMES WILFORD. *Introduction to Political Science; A Treatise on the Origin, Nature, Functions, and Organization of the State.* New York, Cincinnati, Chicago: American Book Company, 1910—pp. 616.
- JOHNSTON, ALEXANDER. *History of American Politics.* New York: Henry Holt & Co., 1910—pp. xiv, 445. 90 cents.
- KAUTSKY, KARL. *The Class Struggle (Erfurt Program).* Chicago: Charles H. Kerr & Co., 1910—pp. 217. 50 cents.
- LAFARGUE, PAUL. *The Evolution of Property from Savagery to Civilization.* Chicago: Charles H. Kerr & Co., 1910—pp. 160. 50 cents.
- LOUGH, WILLIAM, JR. *Corporation Finance, Modern Business.* Vol. IV. New York: Alexander Hamilton Institute, 1910—pp. xix, 480.
- MARVIN, FREDERIC ROWLAND. *The Excursions of a Book-Lover.* Boston: Sherman, French & Co., 1910—pp. 331. \$1.50 net.
- MARX, KARL. *The Poverty of Philosophy.* International Library of Social Science. Chicago: Charles H. Kerr & Co., 1910—pp. 227. \$1.00.
- Massachusetts Commission on Old Age Pensions, Annuities and Insurance. *Report of the Massachusetts Commission on Old Age Pensions, Annuities and Insurance, January, 1910.* Boston: Wright & Potter Printing Company, 1910—pp. 409.
- MODERNIST, A. *Letters to His Holiness Pope Pius X.* Chicago: The Open Court Publishing Company, 1910—pp. xi, 280. \$1.25.



- MYERS, GUSTAVUS. *History of the Great American Fortunes*. Vol. III. *Great Fortunes from Railroads* (Continued). Chicago: Charles H. Kerr & Co., 1910—pp. 413. \$1.50.
- New York State Charities Aid Association. *Seventeenth Annual Report of the State Charities Aid Association of New York to the State Commission in Lunacy, November 1, 1909*. New York City: United Charities Building, 1909—pp. 72.
- New York State Charities Aid Association. *Thirty-Seventh Annual Report of the State Charities Aid Association of New York, November 1, 1909*. New York: United Charities Building, 1909—pp. xxxviii, 138.
- ROGERS, JAMES FREDERICK, M.D. *Life and Health*. Philadelphia: J. B. Lippincott Company, 1910—pp. 202. \$1.00.
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- WRIGHT, CHESTER WHITNEY. *Wool-Growing and the Tariff: A Study of the Economic History of the United States*. Boston and New York: Houghton, Mifflin Co., 1910—pp. xiii, 362. \$2.00 net.

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Vol. XIX. No. 3.

November, 1910

## CONTENTS

	PAGE
COMMENT, - - - - -	217
The Lugano Meeting; The Berlin Centenary; Workingmen's Insurance in the United States.	
THE RELIGIOUS QUESTION IN SPAIN, - - - - -	226
<i>Luis Garcia Guijarro</i>	
THE PROBLEM OF SICK AND ACCIDENT INSURANCE IN SWITZERLAND, - - - - -	235
<i>O. H. Jenny</i>	
WORK, ACCIDENTS, AND THE LAW, - - - - -	255
<i>Howell Cheney</i>	
ECONOMIC PHASES OF THE RAILROAD RATE CONTRO- VERSY, - - - - -	268
<i>A. M. Sakolski</i>	
THE STATISTICAL WORK OF THE FEDERAL GOVERN- MENT, - - - - -	289
<i>Julius H. Parmelee</i>	
BOOK REVIEWS, - - - - -	309
Commons's Documentary History of American Industrial Society; Murphy's Basis of Ascendancy; DeLeener's Organisation Syndi- cale des Chefs d'Industrie; Meade's Economics; Gregory, Keller, and Bishop's Physical and Commercial Geography; Brace's Gold Production and Future Prices.	
RECENT LITERATURE, - - - - -	331

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All payments for subscriptions and business correspondence should be sent to the YALE  
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THE  
YALE REVIEW.

NOVEMBER, 1910.

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COMMENT.

*The Lugano Meeting; The Berlin Centenary; Workingmen's Insurance in the United States.*

THE summer has been rich in International Congresses. Besides the Prison Congress, held in the United States, we have had the Conference on Social Insurance at The Hague, congresses on Home Work and Industrial Hygiene at Brussels, the Conference on Unemployment at Paris, and the biennial meeting of the International Association for Labor Legislation at Lugano. At all of these the United States was represented, and all of the topics discussed have more or less to do with our own problems. Social insurance and hygiene, however, are just beginning to attract general attention in our country, while home work and unemployment are not evils of such magnitude as in the older states of Europe, with their more stationary and less adaptable population. But the Association for Labor Legislation has from the beginning had close relations to the United States. Our government was represented at the conference at which it was formed ten years ago; it contributes towards the maintenance of the International Labor Office in Basel; and the American section, with its 1,400 members, is now the second in size of the fifteen national sections, being outnumbered only by the German section. The topics discussed and disposed of are, moreover, topics on which our States and the United States have legislated for years and the further study of which has an immediate practical interest for us.



The organization of the International Association is a dual one. Its governing body, known as the delegates' meeting, is made up of the representatives of the national sections. But the meeting is also attended by representatives of the governments interested, who, though they are not entitled to vote, take part in the discussions and serve on the commissions. These representatives are usually high officials connected with the departments of labor or with factory inspection. Thus the United States was represented by our Commissioner of Labor, Dr. C. P. Neil; Great Britain by Dr. Whitelegge, the chief inspector of factories, Mr. Delavigne, and Dr. Schloss; Canada by its Minister of Labor, Hon. W. McKenzie King, and Germany by a distinguished group of officials, mostly of the rank of *Geheimrat*. The meeting was also reënforced by members of expert commissions, which have recently been appointed to report upon various hygienic topics.

The method which the association has pursued from the beginning is first to study carefully whatever subject may be presented, and, when the facts are clearly ascertained, to recommend legislation, which may take the form either of national law or of international treaty. Thus the first thing that the meeting of delegates does, after the usual formalities are disposed of, is to divide itself up into a number of commissions. These meet separately, consider carefully the documents prepared for them and the opinions of experts, and prepare resolutions, which are then finally disposed of in the full delegates' meeting. This rather slow and cautious method has produced excellent results. Besides stimulating a great deal of national legislation, and indirectly contributing by its publications towards raising the quality of labor laws throughout the world, the association has directly brought about the important treaties of 1906 prohibiting the use of poisonous phosphorus in the manufacture of matches and the night work of women in certain industries, and it has undoubtedly had an influence in increasing the number of international labor treaties. Ten years ago, when the association was formed, there were but two of these in force; now there are twenty.

The meeting of the present year was attended by about 120 persons, of whom about a quarter were government representa-

tives, and a smaller number sanitary and hygienic experts. The proceedings covered a wide range of subjects, and the resolutions which were adopted would alone require many pages of print, for each of the five commissions turned out a goodly batch. The night work of young persons, the length of the working period in continuous industries, the maximum working day of women and young persons, the definition of the eight-hour shift in mining, the condition of home workers, the hours of work in the machine-made embroidery industry, phosphorus poisoning, lead poisoning, caisson disease, the execution of labor laws, are the subject matter of some of them.

The most important action was probably the vote that steps be taken to secure international treaties prohibiting the night work of young persons, and limiting the working day of women and young persons to ten hours. A special commission is to be appointed to prepare a memorial on these two latter points. The significance of this vote is that the machinery is set in motion by which these subjects are to be regulated internationally, just as the use of white phosphorus and the night work of women were regulated by treaty in 1906.

The most radical vote was that advising the establishment of trade boards, like those created by the English law of 1909, as the one effective method of doing away with the evils of home work. According to the resolution, these boards should be authorized to establish minimum rates of wages for the home workers of certain localities and trades, to extend the rates fixed by collective bargaining to persons and places not included in the contract, and to apply these rates to factory workers making the same kinds of articles as home workers, while the principle should be established that insufficient and usurious wages are null and void and may even be subject to a penalty.

This last demand is not quite as much at variance with American traditions as the others. For under our present legislation wage contracts which amount to peonage or involuntary servitude are illegal, even when voluntarily entered into. It is, however, one thing to annul a contract as contrary to public policy and quite a different matter to give a board power to determine the rates which shall be paid, and the constitutional difficulties of



applying such measures in the United States are such that the question may well be considered an academic one for many years to come in this country. In the meantime we shall have an opportunity to watch the practical operation of the English law, which did not go into effect until January 1, 1910, and which, therefore, is still on trial.

Another important vote required that steps be taken to secure the prohibition of the use of white lead for indoor painting. This indicates that the experiments in the use of substitutes have gone far enough to justify putting this industrial poison under the ban of the law for at least one of its uses.

Four years ago the United States sent no delegates to the meeting of the International Association and therefore had no voice in its proceedings. At the meeting of 1910 not only was the United States represented, but its share in the work was very cordially recognized, and we should not forget that, while in some respects European states have advanced further than we have in protective legislation, in others we are in the lead. This is certainly the case with regard to the introduction of automatic couplers on railroads. As was stated in the last report of the association, our experience in reducing the number of accidents has stimulated European states to try to follow in our footsteps, though they have not yet succeeded in solving the mechanical problems involved. The great advantage of these international conferences is that they are a school in which each nation may learn from the others, and profit no less by their mistakes than by their successes, while the personal acquaintances formed, the opportunity to put and answer questions, the information often elicited through casual remarks, are not the least important of their didactic means.

The centenary of the University of Berlin, which was celebrated October 10th to 12th, impresses an American observer first of all with the contrasts which it offers to a university anniversary in our country. The presence of the Kaiser in the uniform of a hussar; the officers of the students' societies in their gay jackets, embroidered caps and swords; the display of stars, crosses, and ribbons on the breasts of the professors; the con-

ferring of such titles as *Excellenz* and *Geheimrath* as a reward for scholarship, all give the festivities a military and political emphasis which would seem strange in our country. These differences have their roots in fundamental historic facts. When our older universities were founded, they were established by idealists, in a new country, whose chief problems were economic, social, and moral, and which already had well recognized democratic political principles. They were comparatively free from serious external aggression, save that of the Indians, whose elimination was simply a question of time, but they had the wilderness to conquer and above all they had, as their supreme duty, the creation of a self-governing commonwealth, based on industry, intelligence, and character. The expressed purpose of Yale to fit youth "for publick employment both in church and civil state" was practically the purpose of the other colleges of the 17th and 18th centuries, and they created the type which still prevails, even though no inconsiderable number of our newer western universities have been founded by the State.

The University of Berlin, on the other hand, was established by the King of Prussia in a state which, a century ago, had no such thing as popular suffrage, and even now has not achieved it; which had extended its borders by military conquest; whose political ideal was not equality of rights and individual freedom, but a hierarchy of classes with the king at the top. But one hundred years ago Germany was undergoing severe trials. The historical Holy Roman Empire had been broken up; Prussia itself, though the strongest of the North German states, found itself invaded, despoiled and humiliated, by the Corsican conqueror.

It was in this period of national depression that the University of Berlin was founded to make good, by its intellectual achievements, the physical losses of the Prussian monarchy, and its history since that time has stood in close connection with the political fortunes of Prussia. With the increase of Prussian power which came with the formation of the German Empire in 1871, the University of Berlin began to distance its older sisters and to become, both in the number of its students and in the distinction of its teachers, the leading university of Germany. It is natural



that an institution of learning which owes so much to its military and political environment should have a more or less military setting, and that its dependence on the government should be emphasized. Even now occasions are not unknown when this dependence is felt very keenly by the faculties themselves. A comic paper brought out in connection with the centenary a number of cartoons, one of which represented a room being prepared for the festivities. On the wall was a quotation from one of the statutes of the university which says: "Die Wissenschaft und ihre Lehre ist frei." A gentleman from the Cultus-ministerium was represented as directing some decorators to hang drapery over this text. In our country this freedom would be so naturally assumed, that it would be equally unnecessary to incorporate it in a by-law and impossible for the state government to interfere with it.

And yet if we turn from these rather obvious contrasts to look at the course of events since the formation of the empire, *i. e.*, roughly the last forty years of the history of the university, we cannot fail to note a certain convergence between German and American universities in method, in spirit, and in means. It was mainly in the decade from 1870 to 1880 that American students began to go over to Germany in order to take advanced courses and often to qualify for the Doctor's degree. They went partly for the sake of the language but mainly because it was not possible to do the same grade of work at home. Since that time our principal universities have developed and equipped graduate schools, and to quote from an article written for the *Berliner Tageblatt*, by Professor Münsterberg of Harvard, unless more is offered the rising generation than what the older ones found in Germany, nothing will draw them over, because they find equally good average teaching for students at home." We have practically superimposed upon our American colleges the German university, and in this respect the difference between the two countries is less than it was a couple of generations ago. Professor Münsterberg's contention is that, in order to retain its influence, Germany must offer us something more, and this must take the form of opportunities for special and advanced scientific investigation.

This article appeared just before the beginning of the celebration, and it is significant that the most interesting utterance of the first day's proceedings was the statement made by the Emperor, that it was planned to form a society, under his protectorate, to create and maintain institutions of research apart from the universities. He also announced that between 9,000,000 and 10,000,000 Marks had already been raised by private subscription for this purpose, and it subsequently appeared that plans were well matured for the establishment of a laboratory for physical chemistry and of another for general chemistry. From the point of view of the United States the interesting thing is that Germany is in this respect distinctly following our lead. The Smithsonian Institution, the Carnegie Institution of Washington, the Rockefeller Institute, and, to a certain degree, the Sage Foundation, are all familiar examples of institutions endowed by private munificence for scientific research and not connected with any university. Indeed a Berlin newspaper, commenting upon the Emperor's announcement, said, "in this point we are being beaten more and more by the Americans."

If we recall that by the system of exchange professorships American scholars are every year lecturing to German students, we realize that, when President Hadley acted as spokesman for the American Universities as a whole, he spoke not merely as president of an American university, and as a former student of Berlin, but also as a former Berlin professor. We thus see that the relations between German and American universities are not only becoming closer, they are becoming less onesided, and we are in a position to give as well as to take. The foundation in Berlin of the Amerika-Institut, with Professor Münsterberg as its first director, means one more common field of scholarly activity for the two countries.

American scholars may well look upon the Berlin centenary with an interest beyond that felt by scholars of any other country. Though separated by differences of language, of customs, and of location, we may yet feel an intellectual bond, based upon an exchange of services and of ideas, which will lead probably neither to the Germanization of America nor to the Americanization of Germany, but which should be an inspiration to both



countries to put forward their best efforts in behalf of scientific truth.

The Germans have recently been celebrating with a very natural pride the twenty-fifth anniversary of the adoption of workingmen's insurance against accident and sickness. This jubilee happens to coincide with the practical completion of the new Swiss plan for workingmen's insurance, and with the adoption by the State of New York of the first general compulsory insurance law, with the exception of the short-lived Maryland statute, adopted by any State in the United States.

This number of the *YALE REVIEW* contains an article dealing with the history of the Swiss law, and another article, discussing the general subject with reference to the United States, and proposing a scheme adapted to our conditions. The opinion both of economists and legislators is steadily tending to favor some form of insurance as a substitute for the present method of obtaining damages in case of accident by a lawsuit. But it is also evident that it is very difficult to work out the administrative details of any plan and especially dangerous for one country to literally copy the system of another. The traditions of the people, the efficiency of the civil service, the prevalence of voluntary insurance societies, must all be taken into account. Hence it is that although Switzerland amended her constitution within a few years of the inauguration of the German workingmen's insurance plan, so as to make possible the introduction of something similar under federal law, it has taken her twenty years to complete the plan and even now the last bill has not yet passed the legislature. It is to be hoped that the United States will not need quite such a long period of deliberation, and yet in the absence of any provision permitting the federal government to legislate on the subject, action will have to be taken by the States, and in itself this is a very slow process and one which severely taxes the patience of those who would like to see results. Yet it is not without its advantages. The fact that every State is independent in the matter gives us an opportunity to experiment over limited areas. The New York law was avowedly passed as a tentative measure. It was limited in its scope, partly on account of the danger that

any very radical or very far-reaching law would not stand the test of constitutionality in the courts. For our constitutions are an ever-present menace to legislation, and are responsible for a large part of the heavy infant mortality of new laws. It is often wiser, therefore, to pass one which can be kept alive and strengthened by amendment, than to pass a more thorough-going measure doomed to early extinction. One test case in New York has already been decided in favor of the law, and this in itself is a point in favor of the wisdom of those who drafted it. In the meantime, however, other States are working over the subject and proposing legislation on somewhat different lines, and until the matter is entirely thrashed out, we should welcome such friendly criticisms and such constructive suggestions as those contained in the article of Mr. Cheney. The author is a manufacturer who is familiar with the practical problems involved and has shown his interest, not only by activity in improving general conditions in the large establishment with which he is connected, but also by working out a plan for sick insurance among its employees. What he says on the subject is therefore worthy of serious study.



## THE RELIGIOUS QUESTION IN SPAIN.

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### CONTENTS.

Antecedents of the Conservative crisis, p. 226 ; anti-clericalism in Spain, p. 227 ; policy of Canalejas in the religious question, p. 228 ; hostile attitude of the Vatican, p. 230 ; critical position of the Premier, between Catholics and Radicals, p. 234.

IT is a year since there occurred in Spain an event which instantly acquired international notoriety, and whose consequences, bringing about, as they did, a crisis in Spanish politics, at that time dominated by the Conservatives, caused the accession to power of the Liberals. That event was the execution of Ferrer, sentenced by the military tribunal whose duty it was to investigate the riots of the tragic week of Barcelona.<sup>1</sup> Neither the event in itself nor the personality of the condemned man was important enough to merit other consequences than a column or so in the newspapers. But a cry of protest arose from all nations, representing Ferrer as a victim of reaction and the Church, which could not, it was said, tolerate the educative tendencies of the founder of the *Escuela Moderna*. It was the anarchists of Europe, in whose camp Ferrer was worshipped as a god, who first raised this cry. The socialists of France, Italy, Germany, and England went so far as to demand intervention in Spanish affairs and were instrumental in manufacturing a public opinion concerning Spain which had all the earmarks of exaggerated sectarianism and prejudice. This opinion was prevalent also in the United States, for such news crosses the Atlantic by way of France, a country which understands very imperfectly *las cosas de España*. Since the American newspapers all drew from the same source, they all took the same stand. Dailies of all kinds,—*The World*, *The Times*, *The New York Herald*, *The Sun*, *The Tribune*, *The Evening Post*,—

<sup>1</sup> Cf. *The Present Situation in Spain* in *The Review of Reviews*, September, 1909.

reviews and magazines in their articles and caricatures, all heaped the bitterest reproaches upon Spain, the country of obscurantism, the slave of the Vatican, the nation which stifled every effort for progress. At that time the present writer happened to be in the United States, and not only noted with regret this erroneous opinion concerning his country, but even had personal experience of how deeply it had taken root in the minds of the most moderate public; for, when he wrote a letter in defence of Spain to one of the most conservative newspapers of New York, he was informed that it could not be printed because it was "not sufficiently adequate as respects the chief public interest in Ferrer, that is, the legal proof of his guilt." This is not the moment, however, to discuss again the death of Ferrer; we wish only to point out that the efforts of his admirers finally resulted in the overthrow of the Conservative Ministry and the accession to power of the Liberals with Moret as Premier. The ephemeral life of this Ministry may be explained by the fact that it owed its power to all the groups of the Left. A work in which the most moderate Liberals were collaborating with the most extreme anarchists could not be stable, especially in view of the sectarian intransigence which enslaved the will of the Premier and directed it into impossible channels. Perhaps this alone was the cause of the fall of the Moret Ministry. Perhaps the crisis was due to the slight support and confidence given to Moret by the real Liberals, who, realizing the *impasse* in which their chief had put them by his offensive connections with Republicans of all shades, had determined upon a change of policy under the guidance of some other party leader. In either case, the result was that Señor Canalejas took charge of the new Ministry. Would he, a born fighter, with a brilliant political record, accustomed to the sophistries and subtleties of the forum, be successful in the more arduous and delicate task of carrying out a ministerial policy?

As a political orator, Canalejas had already outlined his policy. He had stated<sup>2</sup> that, according to his programme, the following questions must be solved if Spain was to attain to the same degree of progress as other European nations: Clericalism; the Nationalization of the Monarchy; the Necessity for a Democratic

<sup>2</sup> *La Ultima Tregua* (*The Last Truce*), in *Nuestro Tiempo*, December, 1901.



King; the Reform of the Constitution of the Senate; the Greater Participation of the Proletariat in the Government. The political principles involved in this programme were clearly liberal as long as there was a chasm between the Ultramontanes and the Liberals. To-day, however, the various parties, with the exception of the extreme parties, present a confusion of principles which renders impossible the demarcation of different tendencies.<sup>3</sup> By a natural evolution, the Liberals of yesterday have become the Conservatives of to-day, and many political problems have been solved by the Conservatives in a fully democratic spirit. Indeed, the Conservatives were responsible for the purification of the suffrage by the electoral law of 1907; for the immovability of functionaries; for the protection of the working-man and his participation in the task of government; for the creation of social institutions to protect the proletariat; for the reform of the Penal Code; for the policy of absolute freedom in instruction and expression of thought. These problems having been either wholly or partly settled, Canalejas, upon coming into power, found that there remained to be solved, of his governmental catechism, only the question of Clericalism. But this problem is the most difficult of all, for "since Clericalism does not exist in the political order, since there is in the governmental power nothing which savors of Clericalism, those who enter into that power with the promise to fight it, eventually either do nothing, because there is nothing to do, or have to give themselves over to a policy of extremely bitter war upon Catholicism, which policy is the only Anti-Clericalism really existing in Spain; and that cannot be done except by plunging into demagogic and anarchistic currents which would destroy the Monarchy and the social order before they destroyed the Church."<sup>4</sup>

As soon as the elections were over, and the Government was ready to begin the parliamentary work, the Message of the Crown was awaited with great anxiety, everyone desiring to know the policy of the new Ministry in regard to Clericalism, for the announcements of a few days before the opening of the

<sup>3</sup> *Spain since 1898*, in THE YALE REVIEW, May, 1909.

<sup>4</sup> *Nuestro Tiempo*, April, 1910.

Cortes seemed to point to the insistence of Señor Canalejas on this question. The message promised, in no uncertain terms, the solution of those problems "which take for granted essential transformations in the life of the State and in the life of Society, and are closely connected . . . with the situation created by the excessive multiplication of the religious orders and congregations. In regard to these, my Government is endeavoring to satisfy the public desire that, without prejudice to their spiritual independence as assured to them by the principle of liberty of conscience, their activities be reduced and subjected to the civil regulations controlling the exercise of the right of association. With this intent, instructions have been given the Provincial Governors to use the prerogatives and to fulfill the duties set forth in the Royal Order of April 9, 1902; we are negotiating an agreement with the Holy See in regard to the suppression of convents and religious houses not indispensable to the needs of the dioceses; and there will be presented to you immediately a bill forbidding the establishment of associations of that nature, without the authorization of the temporal power, while the law of June 30, 1887, is being reformed, the modification of which law will be in due time submitted to you, and will permit the solution of other aspects of a problem occupying so completely the public mind. My Government, moreover, inspired by the universal spirit of liberty of conscience, has interpreted Article 11 of the Constitution as broadly as its text allows."<sup>5</sup>

So we see that the Premier, giving rein to his sectarian tendencies, proposes to adopt that "socialistic" policy which he promised in his propagandic speeches. He has taken a stand of open opposition to Rome by the promulgation of regulations concerning the Concordat, in spite of vigorous protests from the Vatican and the Bishops and manifestations of displeasure on the part of the majority of Spanish Catholics. Following a plan very similar to that adopted by our French neighbors for attaining separation, he legislates, and afterwards enters into debate with those whom he has just humiliated, contemptuously answering the objections of Rome with the words: "The question has been put. If the definitive answer of the Vatican

<sup>5</sup>The Message of the Crown.



renders agreement between us impossible, I shall pay no attention to it, for I desire to accomplish this necessary reform. The Spaniard is master in his own house."<sup>6</sup> Is not this challenge a prelude to separation?

Certainly, this was not the best attitude to adopt toward the Holy See. Not that we deny the expediency of an agreement in regard to the religious orders; on the contrary, we believe such an agreement almost necessary, on account of the general sentiment of the nation and the antiquated nature of the laws in force at present; but, for the very reason that this is a problem dealing with legislation based on accord, the accord can hardly be unilateral, unless the most elemental laws of international right are to be broken. And the Holy See, on its part, does not refuse to discuss matters with the civil power, as is proved by Article 45 of the Concordat: "If in the future there should occur any difficulty, the Holy Father and Her Catholic Majesty will take mutual measures to settle it amicably."<sup>7</sup>

The question of the religious orders is not one of yesterday. It may be said to have been born with the promulgation of the law of 1887 dealing with the right of association. This law treats of religious institutions with such ambiguity that its articles are robbed of all efficacy in regard to those orders not expressly mentioned in the Concordat. In Article 1, we read that "the right of association recognized by Article 13 of the Constitution may be freely exercised in conformity with what the present law stipulates. To the provisions of the present law, therefore, are subjected associations for religious ends, political ends . . . ." and then in Article 2 we find that "the following are excepted from the provisions of the present law: The Associations of the Catholic Religion authorized in Spain by the Concordat. . . ."

So it is easy to understand why opinions as to the Concordat differ. While some contend that, in accordance with the general spirit of the whole Concordat, all religious institutions should be considered as included in it, and should be governed

<sup>6</sup> Interview published in *A. B. C.*, June 2, 1910.

<sup>7</sup> Concordat of March 16, 1851, approved by His Holiness Pius IX and Her Catholic Majesty Isabel II.

by it,<sup>8</sup> others, observing only the letter of Articles 29 and 30,<sup>9</sup> which treat of the monastic orders, maintain that all religious institutions except the three which are expressly named must conform to the provisions of the Law of Associations of 1887.

The latter opinion is that of the Liberals. They published in 1901, in view of the increasing numbers of the religious orders and the imminent expulsion of those of France, a decree signed by the Minister A. González, which obliged the orders not included in the Concordat to comply with the provisions of the Law of Associations. This decree was followed by that of April 9, 1902, signed by the Minister Moret, which put obstacles in the way of the religious orders then entering Spain from abroad, obliging them to submit to the requirements of the law of 1887, and forcing their members, unless they were Spaniards, to register in the various consulates. But these steps led to such difficulties that the Holy See and the Government agreed upon the *modus vivendi* of April, 1902, which legalized the existence of the religious orders not mentioned in the Concordat by simply

\* Statement of the Bishops to the Premier, issued immediately after the publication of the Anti-Clerical policy.

\* Article 29. "In order that there may be in the whole peninsula a sufficient number of evangelical helpers and workers, whom the prelates may employ to officiate in the villages of their dioceses, to help the priests, to care for the sick, and for other public works of charity and usefulness, the Government of Her Majesty, which proposes to better in due time the college of foreign missions, will take immediate measures to establish, wherever necessary, and with the previous consent of the diocesan prelates, religious houses and congregations of San Vicente de Paul, San Felipe Neri, and another order, of those approved by the Holy See, which shall serve at the same time as places of retirement for ecclesiastics, for carrying on spiritual exercises, and for other pious uses."

Article 30. "In order that there may be also religious houses for women, in which those may follow their vocation who are called to the life of contemplation and to the active life of caring for the sick, teaching girls, and other tasks both pious and useful to the villages, there shall be preserved the institution of the *Hijas de Caridad* (Sisters of Charity), under the direction of the clergy of San Vicente de Paul, the Government providing for its support.—The establishments of nuns who add the education of girls, or other works of charity, to the contemplative life, shall also be preserved.—As to the other orders, the usual prelates, in accordance with the nature of their respective orders, shall propose the houses for nuns in which may be permitted the admission and vocation of novices, and the exercises of instruction and charity which may be fittingly established in them."



entering them on the civil records, which privilege could not be denied them.<sup>10</sup> In spite of all this, since "the Pontiff had forbidden that the decree [of 1901] be respected,"<sup>11</sup> the clergy abstained from respecting it. Señor Sagasta had to confess that it was impossible to enforce it and that no institution had fulfilled the provisions of the law of 1887. The enforcement of the decree of 1901 could be accomplished only by closing convents and dissolving communities by force, a proceeding which would have been extremely impolitic. Thus matters remained, and even Maura, who recognized the necessity of an accord with the Vatican in order to settle definitively the status of the monastic orders in Spain, did not begin negotiations with Rome, for he was unable to come to any agreement with the Liberals, whose aid he needed in so national a question. So Canalejas comes into power, and with an activity worthy of a better cause, after announcing that "an agreement with the Holy See is being negotiated," breaks with diplomatic practices by promulgating the Royal Decree of May 30 (confirming that of April 9, 1902) against religious associations; by promulgating the Royal Decree of July 10, regarding the display in public of emblems of worship; and by presenting the bill of July 8, called the "Padlock Law," which prohibits in a radical manner the establishment of new religious institutions even though they comply with the demands of the former legislation. The text of the bill read by the Premier in the Senate is as follows:

The establishment of religious orders and congregations in Spain has traditionally been subject to the previous and express consent of the civil powers. To-day, when the Government desires to remove, by adequate measures, the evils resulting from the excessive multiplication of the said

<sup>10</sup> *Modus Vivendi*, Article 1. "Inasmuch as the Holy See firmly maintains its thesis that the religious communities which have obtained the approbation of the Government must be *de facto* recognized and authorized by the Concordat, and inasmuch as the Government maintains the contrary, the said Holy See consents to discuss this point, in conformity with Article 45 of the Concordat." Article 2. "The religious communities until now unauthorized by the Government shall be forced to fulfill no other obligation than that of inscription in the civil records, which privilege shall not be denied them." Article 3. "This requisite having been complied with, they shall be considered as recognized by the Government, and shall therefore be included in the class of the previously authorized communities."

<sup>11</sup> Moret, November 10, 1906.

organizations,<sup>12</sup> it seems natural, until we arrive at a definite result and rule, to resort again to that custom; and consequently the undersigned, in accord with the Ministry, and with the consent of His Majesty, has the honor to submit to the discussion and vote of the Cortes the following bill:—Sole Article. As long as there shall not be enacted a new law regulating the exercise of the right of association, the Provincial Governors shall refuse to admit the documents required by Article 4 of the law of June 30, 1887, for the establishment of new associations pertaining to religious orders and congregations, unless the parties in question shall have obtained authorization therefor from the Attorney-General, in accordance with a Royal Decree which shall be published in the *Gaceta de Madrid*. The said authorization shall not be granted when more than one third of the individuals who are to form the new association are foreigners.

J. CANALEJAS.

The Royal Decree of June 10, permitting non-Catholics to display in public their emblems of worship, was doubtless inspired by a spirit of freedom of belief, but is absolutely contrary to the Constitution of the State, which asserts in its Article 11 that the external display of emblems of only the Catholic cult shall be permitted. But if this decree was intended as an act of courtesy toward the foreigners who live among us, it was inopportune, for the sequel has shown how little they appreciate the favor. Although three months have passed since the decree was promulgated, the Protestant chapels which have made use of their new prerogative are very few. And when we consider that the matter provoked the energetic protest of the Catholics of Barcelona, as a result of which Alfonso XIII felt obliged to write to Cardinal Casañas in disapproval of the erection of a Protestant chapel, it is evident that the step was impolitic, as well as unconstitutional and inopportune.

To present these plans "without first disentangling yourselves from the relations with the Holy See which you yourselves have

<sup>12</sup> The following table shows the proportion of monks to Catholics in several European countries:

Countries	Catholic Population	Monks	Monks per 10,000 Catholics
Belgium, 1907 .....	7,276,461	37,905	52
France, 1901 .....	39,252,628	159,628	47
Great Britain, 1908 .....	2,130,000	6,458	30
Germany, 1905 .....	22,109,644	64,174	29
Ireland, 1908 .....	3,308,661	9,190	27
Spain, 1908 .....	19,712,285	54,327	26



established,<sup>13</sup> is to leap into a political change which cannot be carried through by the use of ministerial power, as long as it has and can have the consequences which we have a right to believe this kind of evolution will have in Spain."

The Catholics, on their part, are making ready for the struggle, organizing committees and boards of resistance, "since in the face of danger to religion or the public welfare idleness is permissible to none."<sup>14</sup> Casting aside party interests and all dissension, "they dare do all that the law permits and the Christian conscience does not prohibit, to bring about the happy overthrow of anti-Catholic ministries."<sup>15</sup>

It is therefore clear how difficult is the political life of Canalejas. If he proceeds with his radical projects, the Catholic movement of protest will place him in serious danger; but if he recedes, and does not fulfill the promises of his program, he will alienate the good-will of his most powerful auxiliaries of the extreme Left. This latter peril is already making itself evident, for the strikes which have taken place in the mining and metallurgical basins of Bilbao and Barcelona have a political rather than a social character. The present writer feels that he must agree with the Socialist leader, Pablo Iglesias, who says of the policy of Canalejas: "Je ne vois que du 'bluff', beaucoup de bruit, et très peu de besogne."<sup>16</sup>

LUIS GARCIA GUIJARRO.

Madrid, September, 1910.

(Translated by FREDERICK B. LUQUIENS, Yale University.)

<sup>13</sup> A. Maura, Speech before the Congress of Deputies on the Law of Associations, November 9, 1906.

<sup>14</sup> *Inter Catholicos Hispaniae*, February 20, 1906.

<sup>15</sup> Pius X, Consistory of December 6, 1906.

<sup>16</sup> Interview published in *l'Humanité*, September 8, 1910.

## THE PROBLEM OF SICK AND ACCIDENT INSURANCE IN SWITZERLAND.

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### CONTENTS.

Peculiar conditions which have delayed workingmen's insurance in Switzerland, p. 235 ; study of the subject begun in 1881, p. 237 ; the Federal Constitution amended in 1890, p. 238 ; the law passed by the legislature rejected by referendum in 1900, p. 239 ; provisions of this law, p. 239 ; statistics of benefit societies, collected as a guide to future legislation, p. 241 ; a new Commission appointed in 1905, p. 243 ; its bill for non-compulsory sick insurance, based upon existing benefit societies, p. 244 ; its bill for compulsory accident insurance under a federal bureau, p. 247 ; amendment of the bills by the legislature, p. 251 ; probability of their final adoption in 1911, p. 254.

**I**T is twenty years the 26th of October since Switzerland adopted the principle of compulsory workingmen's insurance by the acceptance of a special article in the constitution. We have not yet succeeded in giving effect to this article.

The first attempt, as is well known, was rejected by the vote of the people in 1900, and a second is not yet ready to be put to the test. The slow progress in this matter, however, is not the fault of the legislative authorities of the Swiss Confederacy, for, as soon as questions of wide-ranging innovations arise, they have much greater obstacles to conquer on account of the conservative working Referendum than exist in countries which have a purely parliamentary form of government.

The political and economic relations of Switzerland did not hinder the introduction of progressive legislation for the protection of workmen. In respect to its factory and liability legislation Switzerland has long stood at the head of industrial nations, and the reforms planned by the impending revision of the factory laws may again be considered worthy of imitation by other countries. If now, in spite of this, the installation of a system of workingmen's insurance, in the modern sense, has not as yet been accomplished in Switzerland, the causes must be sought as much in social insurance as in the characteristics of Switzerland itself.



Legislation for the protection of workingmen is principally for the benefit of all the people; workingmen's insurance, on the other hand, presupposes the existence of a specific class of workingmen. In spite of its progressive industrial development, no special working class has been formed in Switzerland. The history of the country, the division into numberless small communities, the democratic form of government, the great spread of house-industry, and the decentralization of factory industry, equally with the strong development of social forms of assistance and the aversion, peculiarly keen in a democracy, toward a special class privilege, have all hindered the growth of a working class. One can discuss a system of national insurance in Switzerland, but not a system of workingmen's insurance, as the conception of it has been worked out through German legislation. The peculiar form of Swiss settlement and poor laws prevents the need of such a federal or cantonal workingmen's insurance from being felt to a greater degree.

Legislation for the protection of workingmen has gone through the same process of development in all countries; workingmen's insurance, on the other hand, has been established in different ways according to the political, economic, and social peculiarities of the different States. In general, two diametrically opposed systems are to be recognized in social insurance legislation.

The system of *voluntary* insurance, with governmental furtherance, more or less strongly emphasized, rests on the principle of economic Liberalism, and is for that reason especially to be found in those countries where the individualistic idea has its birth and has been most promulgated. Above all, it is to be found in England and France, as well as in Belgium, Italy, and Spain, principally in those countries in which the Romanic element predominates.

The system of *compulsory* insurance, with purely governmental regulation, was first adopted by Germany, soon followed by Austria, Hungary, the Netherlands, Luxemburg, and, more recently, by Norway; this system can, therefore, be also called the *Germanic* system.

In Switzerland, Germanic and Romanic culture meet, and influence each other. It can not be disputed that this double inheritance has made itself felt in social insurance. Switzerland is perhaps not adapted to a strong preference for one of the two systems. The legislators have up to now favored the Germanic system, because they expect the quickest and cheapest results from a systematic development of this system. But, as was the case in France and England, the voluntary system of insurance has long gained ground in Switzerland. It will be as impossible in Switzerland to reject those national forms of insurance which have sprung up under similar conditions, as it was for the legislators in the former two countries to give those who needed insurance a totally new system which was not based on the traditional enjoyment of private initiative. In regard to sick insurance, therefore, legislation will have to be devised so as to favor existing institutions; in regard to accident insurance, on the other hand, where mainly the system of liability is to be supplanted, there must be a preference shown for the Germanic system in order to be successful. An historical resumé of Swiss insurance legislation makes this point clear to the reader. The previous history of the present bill may be briefly recalled.

The Commission of the Council of States first turned its attention to German legislation on insurance in the preparation of the federal law of 1881 concerning employers' liability in factory industries, and designated this solution as by far the most favorable for the workingmen. The Commission held that the enactment of such a law would not be favorable for Switzerland at that time, but believed that that system of insurance, as soon as it should have been tested in Germany, should also be introduced into Switzerland.

The *Klein* motion, accepted by the National Council in 1885, requested the Federal Council to investigate and report upon the question whether or not the introduction of general, obligatory accident insurance for workingmen might be advisable. In the consideration of this motion, the replacement of liability by insurance was debated. Subsequently, in 1887, liability was increased noticeably in favor of the workingmen, and, at the same time, the Federal Council was invited to submit as soon as



possible to the Councils a report and proposition concerning the introduction of a general, compulsory state accident insurance of workingmen.

A report of the Swiss *Handels und Industrieverein*, which was first published in 1890 and 1893, was favorable to the introduction of compulsory insurance against accidents, as well as against sickness, while the liability system was condemned. In order to obtain the necessary information for the introduction of the insurance, statistics were collected of all accidents in Switzerland from April 1, 1888 to March 31, 1891 (published in 1894). Above all, however, it was necessary to give the Confederacy the necessary constitutional power for the introduction of the insurance. This was done by the ratification of "Article 34 *bis*" of the federal constitution:

"The Confederation shall provide, by legislative enactment, for insurance against sickness and accidents, account being taken of existing sick clubs. It can declare participation in the insurance to be obligatory in general upon all or for certain determined categories of citizens."

This new amendment of the Constitution was accepted October 26, 1890, by a popular vote of 283,228 against 92,000. The Department of Industry then assigned the task of working out the necessary laws in January, 1891, to the National Councillor Forrer. The drafts were then submitted to a special Expert Commission and deliberated upon by them in 1893. After a revision of the draft with reference to these deliberations, it was in 1895 examined by the Federal Council and sent with a message of the 21st of January, 1896, to the legislature. In the next three years the drafts were thoroughly discussed, first by the National Council, then by the Council of States, the pending differences between the two chambers were quickly adjusted through the pressure of the indefatigable Forrer, and the proposal was accepted almost unanimously by the councils at the beginning of October, 1899. The financial side of the law was also thoroughly examined and it was believed that the cost of insurance could be met, without the creation of new sources of income, from the general increase of the receipts and from economies.

During the legislative term the Referendum was asked by 117,461 citizens of all the Cantons. By popular vote May 20, 1900, the law, which had not stimulated an active discussion in the press, was rejected by 341,914 votes against 148,035; only the Canton of Glarus showed a majority in favor. A short comprehensive review of the "*lex Forrer*" is here in order.

All wage earners from the age of 14 on, whose yearly income or salary did not exceed the total of 5,000 francs, were made *subject to compulsory insurance*. The independent earners of house industries could, by vote of the Cantons, likewise be made subject to insurance. All between the ages of 15 and 45, who were not required by law to insure themselves, could do so voluntarily.

In order to carry out sick insurance, *district sick associations* (2,000 inhabitants at the least should form a district) and *factory sick associations* were provided. For accident insurance the government was to create a *state insurance institution*.

The *benefits* of the sick associations were to be free services of a physician for a period not to exceed one year and, beginning from the third day of sickness, the payment of sick money amounting to 60 per cent. of the average daily wages based on a graded classification of earnings under ten heads. Upon the sick associations fell also for the first six weeks the burden of incapacity due to accidents. In case of chronic incapacity, the benefit was to consist in an annuity of 60 per cent. of the wages; in case of death, besides a death benefit of 20-40 francs, in a maximum pension of 50 per cent. of the year's salary to the heirs.

The *premiums* were to be raised in the case of sick insurance from a federal tax of one centime a day for each member and a maximum tax on the employer and on the employee of 4 per cent. of the earnings. In the case of compulsory insurance, the employer was to pay half; in the voluntary insurance, the insured was to pay the total tax himself. The National Council could also vote for mountain districts, as well as for agricultural laborers, small tradesmen and mechanics subject to compulsory insurance a further contribution from the government of the maximum of one centime a day for each member. The Canton guaranteed the dues of the independent workman engaged in



house industry. The Canton had also to assure the responsibility for all deficits of the sick associations. The supervision of the public funds was to be given to the officers of the Canton under the control of the Confederacy. Disputes were to be settled in the courts of arbitration of the Cantons with appeal to an *insurance court of the federation*.

In accident insurance the premiums were graded according to the degree of injury and the wage class; the government paid one-fifth of the premium, the employer the rest; he, however, could take one-fourth of his share, or 20 per cent. of the entire premium, from the earnings of the workman. The liability law was repealed. Contrary to the former practice, the workmen had their benefits decreased (from 100 per cent. to 60 per cent.) and had besides this to pay a part of the premium, which up to this time had not been the case. For this, however, the workman was insured, and need not resort to a liability suit for his rights.

Besides the public societies (*Kreiskrankenkassen* and *Betriebskrankenkassen*) the voluntary sick societies were still left the right to participate in the subvention of Confederation, as far as they furnished their members with equal benefits. The number of persons subjected to compulsory insurance was reckoned at 600,000 and the division of the burden was provided for in the following manner:

	Sick Insurance fr.	Accident Insurance fr.	Total fr.	%
Government .....	2,540,000	2,624,000	5,164,000	22
Employer .....	6,000,000	4,872,000	10,872,000	46
Employee .....	6,000,000	1,624,000	7,624,000	32
Total .....	14,540,000	9,120,000	23,660,000	100

For those insured voluntarily the Confederation would have had besides this to pay about two million, so that its entire tax, including 300,000 francs for military insurance, would have reached the sum of 7,545,000 francs.

Since in the law of 1899 the provisions concerning the military insurance were not affected, they were separated and, after revision, made into the law of the 26th of June, 1901.

After the rejection of the law of 1899, there was a general demand for the preparation of a new draft. Petitions and reso-

lutions from different sources were sent in to the Federal Council and the Federal Assembly. Some desired that the subvention of the government should be divided amongst the cantons proportionally to the population; others demanded the direct subvention of the existing sick associations by the Confederation. Even in the preparation of the first draft, the ignorance concerning the standing at that time of the different voluntary insurance organizations was experienced again and again in unpleasant ways, and it is an undisputed fact that this first draft was chiefly wrecked because the interests of the numberless voluntary aid associations already existing were too little regarded. As soon, therefore, as the preparation for a second draft was taken up, it was at once clear that the system adopted could only be successful if it made use of that already existing. The majority which rejected the measure had been opposed not to the substance, but to the proposed form.

It was necessary, first, to obtain exact statistics of the existing benefit societies. The statistics concerning the voluntary benefit societies in Switzerland for the years 1865 and 1880 prepared by Professor Kinkelin in a manner acknowledged as excellent, could naturally not be considered as authoritative after the year 1900. Therefore, for the third time, the Swiss Statistical Society, at the instigation of the Department of Industry, took the initiative in an investigation and published in September, 1907, the *Statistics of the Mutual Benefit Societies in the Year 1903*. The results of this collection of statistics were available for use in the Message of the Federal Council concerning sick and accident insurance, issued the 10th of December, 1906.

This extremely interesting collection of statistics, prepared by Dr. A. Gutknecht, occasioned many surprises. Above all, it revealed the great development of the mutual insurance system since the year 1880. The number of societies had doubled and the membership increased to one-half million, i.e., two and one-half times the former membership, so that the percentage of the insured inhabitants increased from 7 to 15 per cent.

It is very interesting to note that the benefit societies of Great Britain, which are also organized on the principle of voluntary membership and self-government, developed in the period



between 1875 and 1903 in a very similar fashion. The membership amounted to about six millions in 1903, i.e., likewise 15 per cent. of the population. In Germany, however, under the system of compulsory insurance, the number of those insured against sickness amounted in 1906 to 20 per cent. of the inhabitants. It is easy to see that in Switzerland and Great Britain the lowest classes of workmen, who need insurance most, are not embraced in the system of voluntary insurance and never can be. If the system of voluntary insurance is lacking in this respect, it still cannot be disputed that just those lowest classes themselves, in spite of obligatory insurance, must be left to charity. The popular vote of 1900 shows that the system of voluntary insurance cannot, because of its failure in this respect, be replaced by that of compulsory insurance, which was displeasing to the people.

The statistics of the Swiss benefit societies of the year 1903 showed, however, that the financial condition of the societies was still an unfavorable one, and since the earlier investigations no improvement could be discovered. Excluding the great benefit societies of transportation companies, the dues of the remaining benefit societies have scarcely covered the running expenses. The surplus income of the sick benefit societies in 1903 is due only to the interest on the thirty-five million endowment. Unfortunately, Swiss statistics give no information on the actuarial balances of the insurance societies, as is done in the case of the English benefit societies. In this matter of financial statements, the Forrer draft would have effected an improvement, and every new insurance law that aims not only at the quantitative extension of the aid societies, but also at their qualitative betterment, must strive to give them a better financial foundation.

It is above all things extremely difficult to do justice to the demands which a system of insurance societies, based upon the technical principles of insurance, demands of an organization, without endangering the principle of complete freedom. A consideration of the development of the English aid societies shows however, that this difficulty can be overcome. In England, the benefit societies have developed, to a great extent, through the private initiative of those who needed insurance. This, however, has shown itself too weak to satisfy all demands. Besides

the friends of voluntary insurance there was also, therefore, an active party which considered obligatory insurance the only salvation. Legislation had been, however, limited to protect, develop, and further the system already existing, and not to replace it by a system of force. Voluntary insurance is so deeply rooted in the habits of the English that there is no longer room for compulsory insurance. The English benefit society legislation gives the societies certain rights and privileges, but lays certain definite duties upon them. The most important of these are the full publicity of the management, and the submission to the proper government department of a yearly report, and of a statement of the specific results of insurance operations. The rigid publicity of the yearly report and financial statements has substantially helped to increase the strength of the aid societies. The appeal to the spirit of competition of the societies has had excellent results. Further, the two latest statistical statements of benefit societies of both countries, the Swiss of 1903 and the English of 1905, show in different points a remarkable agreement. A more detailed consideration of the two publications would, however, lead us too far afield. We shall, therefore, return to the consideration of Swiss legislation.

In the light of the lessons of the preceeding insurance campaign, of the results of the third publication of benefit society statistics, as well as of some among the many memorials handed in to the officials since the year 1900, a new bill for sick and accident insurance was worked out. A commission was appointed from the Federal Council in 1905, consisting of Messrs. Deucher, Comtesse, and Forrer, the last of whom had been elected, in the meantime, to the Federal Council. This delegation was directed to occupy itself especially with sick and accident insurance legislation. The principle was established that sick insurance should be carried out in the form of subvention of the existing societies; accident insurance, on the other hand, as a national affair. Both branches of insurance should be legislated upon at the same time. A jurist was then appointed, Dr. E. Cérésole, for the Department of Industry, who should work out the new drafts. In December, 1904, he submitted to the Department a draft for sick insurance and in February, 1905,



a like one for accident insurance. The commission of the Federal Council occupied itself with these drafts until July, 1906, and on the 10th of December, the Message of the Federal Council with the finished draft of the law was submitted to the Federal Assembly.

The fact that the officials dared not expose the new draft to the chance of failure, and that, after the rejection of the law of 1899, a new defeat of legislative activity would hinder social insurance for a great many years, caused the Federal Council to compromise.

In the case of sick insurance, the principle of compulsion was abandoned. The adoption of obligatory insurance was left to the cantons or communes. Compulsory insurance of course may be introduced by the legislative body at a later date, when the situation is more favorable. Individual cantons already accept the principle of compulsory sick insurance, and benefit society statistics have shown that 120,000 people, that is, a fourth of the membership of all sick benefit societies, are compulsorily insured. It is hoped by the proposed law so to further voluntary insurance that it also will become general. The passage of the law of 1898 in France for the subvention and inspection of the present mutual benefit societies caused a rapid increase of the number of those who are insured against sickness, and to-day they number about 7 to 8 per cent. of the population. Under a similar system, the proportion in Belgium is 11 per cent. of the population, and in England 12 per cent., while the corresponding number insured under the system of compulsory insurance in Germany is 20 per cent., and in Austria only 11 per cent. In Switzerland, more than half (about 55 per cent.) of those who were to be insured according to the earlier draft are already insured against sickness, part voluntarily and part compulsorily.

To further sick insurance, the Confederacy makes use of sick benefit societies recognized, inspected, and subsidized by it. Only those shall be recognized which carry on sick insurance, exclusively or in connection with other kinds of insurance, and have their headquarters in Switzerland. In regard to member-

ship, it is demanded from these societies that they accept persons of both sexes under the same conditions, and that they do not exclude candidates because they are Swiss citizens. Aliens can therefore at any time become members of recognized sick benefit associations under the same conditions and privileges as the Swiss themselves, provided they live in Switzerland. In return for this extension of privileges to aliens, reciprocity treaties may provide that the Swiss in foreign countries shall enjoy the benefit of their insurance legislation. In this way, Switzerland also does her share in the development of an international social insurance.

No harm results to the sick benefit associations from the admission of women under the same conditions as men, since the greater frequency of sickness among women is balanced by their lower average age. Women in childbed, who after recovery are not yet allowed by law to continue their occupations, are paid, during the continuation of the prohibition, half the sick benefit paid in case of sickness.

The *Karenzzeit*, i. e., the time which must pass from the day of entrance of a member until the beginning of his eligibility for benefit, can be no longer than three months.

The *Wartefrist*, i. e., the time from the beginning of the sickness until the beginning of payment by the society, can be three days at the most in the case of a society which pays a sick benefit; in the case of a society which only supplies medical aid, there is no period. The duration of the minimum payment is fixed at six months, at the least. This minimum benefit consists, with those societies which care for the sick, in the rendering of medical treatment and medicine, or in the case of those which pay money, in the payment of at least one franc a day.

As the statistics of the benefit societies show, these conditions fixed as normal in the law are already carried out in the majority of societies, so that it will not be difficult for all societies with the help of the subvention of the Confederation to increase the minimum payments or to establish their finances on a sound basis.

The societies which give medical treatment had in 1903 about 230,000 members, and showed a marked growth since 1880.



The societies which give financial aid, found principally in Romanic Switzerland, numbered 185,000 members. The differences in organization make themselves strongly felt when the question of transfer of membership arises. In the bill of 1899, with its uniform type of organization, transfer was very simple. Since, however, in the new law, societies for special occupations, for special trades, for different creeds, or with other conditions, are sanctioned, not everyone will find in his own town a society which will suit him and which will at once accept him. Here a lack is apparent which would have been filled by the uniform type of sick benefit societies provided for in the earlier bill.

All sick benefit societies which fulfill the requirements are to be subsidized by the government. The subsidy is to consist of one centime per day for each member. This yearly payment of the Confederation, of 3 francs 65 centimes, corresponds to a daily payment of sick indemnity of about 48 centimes, thus about one-half of the required minimum payment. Since the daily benefits of those sick associations which give medical attendance is reckoned as something less than one franc, these societies receive a relatively greater subvention. The government plans in this way to stimulate them further. The government's contribution to such societies as give besides the medical attendance, or a minimum of one franc a day, a money payment of at least one franc, is one and one-half centimes per member, or 5.48 francs a year. Those who are members in more than one society receive the subvention only once. The supervision is invested in the officers of the Canton. To the government is reserved the right of general supervision and control of the accounts. The Federal Council ascertains also if the societies guarantee their members the necessary security. The striking of balances is not, however, demanded. The recognized sick societies are obliged also to assist in accident insurance.

If the proposed draft is far from satisfying all the conditions desired in the draft of 1899, its acceptance will nevertheless be greeted as an important advance. With the introduction of free transfer from one society to another, with the increased facilities for the insurance of women and children, and with the bettering of the financial condition of the societies, a quantitative and

qualitative improvement will be practicable; a foundation will thus be created upon which to build later. The text of the constitution will, it is true, not be exactly realized, since insurance against illness will not be created, but only subsidized. In respect to this branch of insurance, therefore, Switzerland follows the Romanic system.

Accident insurance could not be founded upon existing institutions, since the liability laws of 1881, 1887, and 1905 were to be superseded. The dissatisfaction with the liability system was one of the motives for the acceptance of article "34 bis" of the constitution. The following defects are charged against the existing liability laws:

1. The risk to which the employer is exposed through his liability for compensation for accidents; he can, it is true, insure himself against it;

2. The impossibility of securing payment, by the injured person or his heirs, from a non-insured employer who is unable to pay;

3. The long, costly liability suits, which are always very uncertain in their outcome;

4. The ill will which even the liability for accidents sometimes, and the prosecution of a suit always, arouse between employer and employee;

5. The form and amount of compensation, which do not correspond to the loss; the maximum payment of 6,000 francs, set to clear all claims, is much too small, and the quittance system (*Abfindungssystem*) has in general many disadvantages;

6. The payment of full wages, in case of accident (100 per cent. of the workmen's earnings), is dangerous, because it encourages simulation;

7. The inequalities and injustices which must arise through different liability laws existing at the same time. For example, the maximum claim mentioned above is not found in the liability laws of transportation companies of 1905.

Most states have substituted, little by little, for the liability system, which always has an unpleasant personal character, the accident insurance system. Insurance is purely a mat-



ter of business. Accident and the material settlement of it belong to industry and constitute a certain percentage of the cost of production. The workman is thereby made independent of the employer, and the opposition which liability for accident has created between employer and employee vanishes. The Message of the Federal Council, therefore, designates the solution of the question of accident insurance, next to that of sick insurance, as the most pressing need.

The present draft of accident insurance legislation has taken a number of points from the law of 1899, such as the creation of a federal accident insurance bureau, the indemnification of all accidents, even non-industrial, the benefit to the injured and the manner of the subvention by the government. This bill had necessarily to depart from the early draft in defining those compelled to insure. The Forrer law demanded the compulsory insurance of all dependent wage earners. The new draft could not go as far, because sick insurance, which has to be carried into effect simultaneously, does not recognize compulsion.

Insurance is required, rather, only in those trades which are covered under the present liability law. Employees in agriculture, handicrafts, small trades, commerce, and domestic service, as well as workers at home, day laborers, and casual workmen do not come under the accident insurance law. On the other hand, all these classes of workmen can insure themselves voluntarily and enjoy the subvention of the government. The way is thus prepared for a further extension of insurance; and the experience gained can be used in future legislation. Aliens are subject to the same conditions as the Swiss, but mere transitory work in Switzerland in the employment of a foreign concern does not necessitate insurance. The right to receive payments shall not be taken away because of residence in a foreign country.

The two main features of the accident insurance law, namely, the Federal Accident Insurance Bureau and the insurance of accidents not peculiar to the industry, have a close organic relationship. In making insurance obligatory, for certain persons, the government binds itself to provide the means of insurance. At the same time, it did not wish the injury of a workman, which is always a misfortune to the injured, to become an object

for private speculation. This demanded the creation of a special institution, which alone should have the right to carry on the business of insuring laborers against accident. In order to arouse the most intense interest in the welfare of this institution, all should be subject to the payment of dues. As compensation for the dues paid by the workmen, which, under the liability system were naturally out of the question, as well as for the reduction of the benefit from 100 per cent. to 70 per cent. of the wages, all the accidents, even those not pertaining to the industry, are to be covered by insurance. Moreover a share in the management of the insurance institution must now, of course, be conceded to workmen.

The accident insurance bureau must be thought of as a great mutual clearing house which is administered by all who have an interest. The competition with private insurance companies, who would usurp the good risks with a careful rejection of the bad, had to be eliminated because of the smallness of the country. Further, the institution enjoys the privileges of free postage, freedom from taxation, freedom from stamp duty and the rights of a legal corporation. To the board of management, consisting of representatives of the government, the employers, and the employees, according to the percentage paid by each, authority is given not only in purely business affairs, but also to establish premium and risk tariffs, as well as actuarial tables for regulating payments. The employer and the employee coöperate in the carrying out of the insurance at the lowest possible cost, and in the establishment of rules and regulations for the prevention of accidents and of simulation.

The institution is to maintain agencies to carry on the ordinary business of insurance. It may, for this purpose, make use of recognized sick benefit societies at a low compensation, as far as they are suitable. There is also an important reinsurance service for the minor accidents whose cure takes less than six weeks. This is also given over to the local sick benefit societies, in return for the payment of a fixed premium. By the prospect of a slight profit, the societies are interested in the proper management and care of small accidents, and the institution thus escapes with the least expense.



The benefits of the institution consist in the granting of care and money to the injured, in invalid pensions, in death benefits and in pensions to the heirs. Sick benefits and invalid pensions amount to 70 per cent. of the earnings, the pensions to survivors to a maximum of 50 per cent. and a death benefit of 40 francs. Intentional bringing about of accidents and gross negligence led to forfeiture or scaling down of claims. Even non-industrial accidents, which many times are hard to distinguish from industrial accidents, and often formerly led to suits, are now included in the insurance. With this provision, Switzerland has placed herself in an entirely new position, which has as yet not been occupied by any other nation with a perfected insurance for workmen.

The subvention of the Confederation amounted, according to the law of 1899, to a fifth of the entire premium; three-fifths were to be paid by the employer, and one-fifth by the employee. In the present draft, this division is provided for, but only as an average. Specifically, the less dangerous trades receive a relatively larger contribution to the premium from the Confederation. For these the danger from non-industrial accidents is relatively greater; furthermore, it is planned in this way to encourage measures for prevention of accidents. The rest of the premium is to be paid by the employer; he can, however, withhold the maximum of one-fourth of his share from the earnings of the workman.

The cost of establishing the bureau for accident insurance is to be paid by the government, and it also pays half of the cost of management. The disputes arising from this law shall be settled legally by an insurance court created solely for this purpose.

The yearly expenditure of the government is estimated as follows:

Sick insurance, 600,000 insured .....	3,256,000 fr.
Accident insurance, 430,000 insured .....	3,650,000 fr.
Total .....	<u>6,906,000 fr.</u>

The cost of establishing the insurance bureau, estimated at 200,000 francs, must also be added to this.

For parliamentary consideration, the bill of the Federal Council first went to the National Council, where it was referred to a committee. Public criticism became now very active, and in addition to the comment of the press, the committee was showered with memorials, petitions and resolutions. The boards of trade of different cities and cantons, for the most part, opposed the bill. Very little was said in general against sick insurance; only the right of a free choice of a physician was criticised. Accident insurance, especially the bureau for accident insurance and the insurance of non-industrial accidents, was pronounced unacceptable both by those engaged in trade and manufactures, and by private insurance companies; even the manner of paying the premiums, the form of notification, and the division of the subvention of the government had opponents.

The committee of the National Council thoroughly considered the numerous objections and completed its deliberations, which took about forty sessions, in May, 1908. In regard to sick insurance, the committee voted to make over the right of the cantons to introduce compulsory insurance to the communes; to render possible the recognition of societies with definite political, trade, or religious affiliations; to facilitate transfer; to retain the freedom of choice in regard to physicians and druggists; to increase the benefits to women and those in childbed; to increase the contribution of the government to societies in mountain regions; and to make it the duty of the government to share the costs of obligatory cantonal insurance. For women and children the payments of the government are increased to  $1\frac{1}{4}$  centimes and for societies which give combined benefits to  $1\frac{1}{2}$  centimes.

In regard to accident insurance, the Commission voted to adhere firmly to compulsory insurance, to the establishment of an accident insurance bureau, and to the insurance of non-industrial accidents. On the other hand, the individual insurance provided in the draft is dropped, and for it the simpler collective insurance with the keeping of wage scales is substituted. In place of the graded contributions of the government which were found too complicated, there was proposed a uniform contribution of  $\frac{1}{2}$  of one per cent. of the wages; the rest of the premium is paid  $\frac{3}{4}$  by the employer, and  $\frac{1}{4}$  by the employee. Voluntary insurance has been extended to wider circles; the benefits for all grades



raised 10 per cent. The buying out of a pension is provided for in special cases of traumatic neurosis. The coöperation of the sick societies as reinsurers for minor accidents was organized in such a way as to lead to a greater independence of the societies. The changed draft will affect about 700,000 people (20 per cent. of the population) in sick insurance and 300,000 in accident insurance, and accordingly the payment of the government is increased yearly from 7 million to 9 million francs.

The National Council itself, which at the instance of the chairman of the committee, Hirter, closed the discussion of the bill before the election in the fall of 1908, adopted in practically all the important points the report of its committee. Certain diseases peculiar to particular trades are also included in the insurance. Only those shall be eligible as physicians and druggists who are in possession of a federal diploma.

In the principal points, therefore, the National Council has endorsed the draft of the Federal Council of 1906. The bill was now given to the committee of the Council of States, already appointed in the session of December, 1908. This committee handed in its report at the end of 1909, so that the Council of States could pass upon the whole draft in the session of December, 1909, and of the spring of 1910.

The Council of States, at the instance especially of the chairman of the committee, Usteri, adopted a number of changes in the bill. The insurance of sick benefit for children under fourteen years was prohibited; on the other hand, women in child-bed are to receive the full sick benefit for six weeks after confinement. The government is to pay a considerable lying-in premium to the societies. The federal contributions are to be reckoned for the whole year in a round sum, instead of by days. The dues of the government are fixed at 3 francs, 50 centimes for children, 3 francs, 50 centimes for men, and 4 francs for women, when the societies provide for the minimum benefits. For combination benefits, the federal subvention is raised to 5 francs. The regulations concerning transfer are simplified, and the freedom of choice of physicians is restricted in the interest of the societies, so that in the bigger communities the societies may make contracts with some of the doctors. The number of contracting doctors, however, must be over half of those practicing in the community.

The Council endorsed the erection of a federal bureau for accident insurance; Lucerne was named as its location, and the management was given greater independence. On the other hand, the Council of States separated the insurance of industrial and non-industrial accidents. The costs of industrial accidents are to be assumed by the employers, those of non-industrial accidents, on the other hand, by the insured. This complete separation will work favorably on the relations between employers and employees. Of the federal subvention, a part is to be used for the net premium of non-industrial accidents, the other part for the cost of maintenance; the government contributes nothing to the premium of the employer. Of course, this arrangement necessitates the keeping of separate books. In the interests of the insured, the measures concerning occupational diseases are extended to include also those cases the cause of which can only be traced mainly to a material dangerous to health.

After a detailed investigation, the Council of States concluded that the net premium, advocated by the Message of the Federal Council, 2.5 per cent. of the wages, should be raised to 3.3 per cent. The division of the cost of the insurance is altered by this. The number of insured being the same as in the proposals of the National Council, and allowing a 10 per cent. increase in the wages, the estimate becomes as follows:

Voluntary Sick Insurance of Societies .....	3,490,000 fr.
Compulsory Insurance of Cantons .....	780,000 fr.
Additional contribution for Mountain Districts .....	300,000 fr.
Accident Insurance .....	2,178,000 fr.
Total .....	6,748,000 fr.

In accident insurance, the division of the entire burden is as follows:

	Government	Employer	Insured	Total
Net premium for industrial accidents .....		19,800,000		19,800,000
Net premium for non-industrial accidents .....	990,000		2,970,000	3,960,000
Cost of administration .....	1,188,000	990,000	198,000	2,376,000
Total .....	2,178,000	20,790,000	3,168,000	26,136,000
Per cent .....	8.3%	79.6%	12.1%	100%



The contribution of the government is increased two and one-half millions of francs yearly above the estimate of the National Council.

Both Councils have taken a position based essentially upon the proposals of the Federal Council. They are unanimous in the subvention of existing sick benefit societies; in the establishment of an institution for accident insurance and in the insurance of non-industrial accidents. The resolutions of the Councils disagree in some subordinate points, but the reconciling of these will scarcely occupy more than half of 1911. In case the Referendum should be applied again, the vote of the people could then take place in the fall of 1911, or at the latest in the spring of 1912.

By the acceptance of this improved draft, a great social work will be accomplished, and Switzerland will then take a prominent place among the nations in regard to labor insurance, as she already does in labor legislation. The obligation which the government assumed, twenty years ago, toward those who are robbed of their earnings through sickness and accidents, will be met by the Swiss people through this insurance. Where the law does not yet effect the completest realization, it yet contains the preparations for, and the possibility of, a later development. In respect to the extent and the benefits of insurance, Switzerland can scarcely be said to be behind the recognized high standards of the German Empire, if one excludes old age and invalid insurance, as well as the insurance of relatives, which still remains to be created.

O. H. JENNY.

Statistisches Amt, Basel, Switzerland.

## WORK, ACCIDENTS, AND THE LAW.<sup>1</sup>

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### CONTENTS.

Nature of the evidence regarding the causes of accidents, p. 255; two groups of measures for lessening accidents, p. 257; the distribution of the income loss from accidents, p. 258; disadvantages of our present method of basing compensation on personal fault, p. 258; need of a system based on risk, p. 259; superiority of the German to the English system, p. 261; outline of a plan suited to conditions in Connecticut, p. 263.

MISS EASTMAN'S book, published under the title above, is a comprehensive presentation of the material gathered for the Pittsburg Survey in 1907-08, and for the New York Employers Liability Commission in 1909. As described in the publisher's advertisement, it is a "dramatic and compelling account" of industrial accidents, studied with the object of determining: (1) the indications as to responsibility, and (2) the material loss and privation resulting therefrom.

The materials, as far as they attempt to determine the causes and sources of responsibility, are questionable. Their purpose is to correct the distorted and prejudiced accounts of accidents which have come from the employers' reports, and from the evidence of employees whose jobs possibly depended upon a one-sided testimony, given before discredited and perhaps venal coroners' juries. Yet, however prejudiced such past testimony may have been, and however earnest is the purpose to present a truer picture, it cannot be claimed that evidence taken from six months to a year and a half after the occurrence of an accident, from the testimony of interested and perhaps justly bitter friends and relatives, or from the hearsay of fellow workingmen, anonymous foremen and labor representatives, is a safe basis for any exact statistics from which to draw deductions as to causes and responsibilities. And when such figures are colored by the necessities of a "dramatic and compelling" style in order to prove

<sup>1</sup>*Work, Accidents, and the Law.* By Crystal Eastman. The Pittsburg Survey. Russell Sage Foundation. New York: Charities Publication Committee, 1910—pp. xvi, 345. \$1.65.



that only thirty-two per cent. of the fatal accidents can be laid to the responsibility of the victims, their reliability suffers accordingly. We might accept the conclusions as roughly indicative of conditions, were they not further weakened by the attempt to show that only twenty-one per cent. are really caused by the carelessness of the worker; strictly speaking, five per cent. being due to his ignorance, three per cent. to his youth, one per cent. to physical weakness and two per cent. to drunkenness.

A great amount of valuable material in the nature of observations rather than of exact evidence is presented by the author to establish the necessary points: (1) that industrial accidents to-day bear no proper ratio to a carelessness which is preventable by employees, but (2) are in large part due to the inevitable risks of industry inherent in modern organization and methods, and therefore (3) are to be prevented, so far as law can reach them, by more exacting regulations of the industry itself, rather than (4) by throwing so heavy a burden upon the imperfect human operators, as the precedents of an older and different industrial system allow us to do. These propositions taken by themselves are incontrovertible; by no one less so than by those who really know the nature of present conditions best—the employers and organizers of our great manufacturing industries, railroads and mines. They are rather weakened than strengthened by attempting through many deductions to fix the exact ratio of responsibility. All of us who are in any way intimately connected with the present system must realize to what a large extent accidents are due to our processes and methods of production and transportation, to working under high pressure or fast speed, to powerful tools, to faulty construction and improper inspection, and to the incalculable effect of excessive strain and temperature, all operated by or under the direction of imperfect men and women.

But taken as a whole, Miss Eastman's work conclusively illustrates in a way that is both timely and necessary how inexorable and inevitable is the connection between the various powers of modern industry, imperfectly harnessed and operated, and the average limitations of human nature. Whether we accept her specific classifications (and many of them seem most questionable), is not material to the earlier stages of her argument.

In the chapter on the prevention of accidents the important question is discussed as to what remedies the law can best exercise to improve conditions. These remedies are considered under two heads or theories, whose sphere cannot always be separated: (1) limitations upon production and elimination of the compelling force of competition as an economic measure of regulation; (2) more stringent and exacting laws regulating construction, inspection and physical conditions of production, as a legitimate exercise of the police power. The author, while not arguing for the necessity of legal limitations, evidently doubts the satisfactory efficiency of police regulations. The following list of the remedies proposed suggests how they may take the direction either of limitation of production, or of its regulation, according to the purpose of the enacting legislatures.

1. Those tending toward limitation on production are:
  - (a) Reduction of the hours of work.
  - (b) Reduction of the rate or speed of production in many lines of work.
  - (c) Restrictions on the employment of foreigners, and of immature and green hands.
2. Those tending toward police regulations are:
  - (a) Requiring more stringent provisions for safety in construction.
  - (b) Compelling adequate plant inspection and the correction of known defects.
  - (c) Requiring adequate warning and signal system.
  - (d) Compulsory instruction of workers in hazardous trades.
  - (e) Prevention of the employment of inebriates and moral wrecks.

It will not always be possible for legislatures acting under political pressure to distinguish as to whether statutes in the form of police regulations are really designed for the protection, safety, health, and conservation of its citizens, or are disguised in the form of police regulations but really designed to limit production and to artificially raise a class of wages. The dividing line between the two is sometimes a shadowy and indefinite one. But it certainly is to be hoped that it will not become the policy of any State to resort to such limitations on produc-



tion as a means of preventing accidents without exhaustively attempting to perfect an efficient and honest inspection and regulation of dangerous trades, coupled with complete and systematic publicity of all accidents and their causes.

It is to be regretted that Miss Eastman, while clearly stating the issue between limitation and regulation, failed to show that the necessary result of such limitations on production as increase its cost is a correspondingly higher cost of living, entailing increased burdens for workingmen to carry. Restricted production and higher prices, the first expedient which suggests itself, is a tax upon the consumer, who, if anyone, profits by the present injustice. But we must not forget that this consumer is to an enormous extent also the producer, and that the cost of such a direct tax in the shape of higher prices will be infinitely greater than the increased cost of regulating effectively what we are now doing ineffectively, often wastefully and dishonestly.

In the study of the distribution of the income loss, the author is dealing with facts regarding average wages, expenses, and amount of compensation paid. These are more readily ascertainable and not subject in their classification to so many deductions and observations. As is to be expected from the soundness of her general premises, the economic loss is not distributed according to the responsibilities properly inherent in the industries, but according to the older doctrines of the personal responsibility of either the injured person or of the employer or owner. It is shown that the burden was borne to the extent of eighty-four per cent. of the average income loss by the injured persons or their dependants, while the industry added but sixteen per cent. of such loss to its cost of production. The condition might have been justified only on the ground of the existence of that close personal relation between master and servant, between production and hand work, out of which our law of personal injuries has grown, with its exaggerated defence of assumption of the trade risk, assumption of the risk for fellow servants, and contributory negligence.

The question as to whether comparative wages cover comparative risks, upon which supposition the doctrine of the assumption of the trade risk was built, is taken up and its

falsity amply demonstrated. That wages do not cover the trade risk, with certain exceptions in the extremely hazardous employments, is obvious when it is considered how slight an increase of wages will attract labor to trades in which the risk is abnormally high. The laborer has no means but the exigencies of his situation for intelligently measuring the relative wages between two jobs, or of knowing whether the wages cover the trade risk or not. And supposing that there was a freedom of choice of jobs on the basis of their net returns, it is either impossible or impracticable at present for most workingmen to cover the risk which they are supposed to have assumed by investing any surplus earnings, or by buying safe insurance at anything but extortionate rates. On every hand we are living beyond our incomes. Is it to be wondered at that workingmen, between the alternative of spending a minute surplus for a higher scale of living, or of putting it into industrial insurance at present rates, choose the former?

In the discussion of the genesis of the law and its present status the treatment is fair and to the point. The present system, based on a theory of personal fault, is in contradiction with causes and conditions to-day. It satisfies neither employers nor employees and is irregularly unjust and burdensome upon both; it does not fairly distribute either the burden of income loss or the contingent expenses of disability; it is economically wasteful and cruelly slow; as a whole it is a disgrace to our business intelligence, our sympathies, and our sense of justice.

In the final and very important field of future constructive legislation to accomplish a more equitable distribution of the burden of accidents, Miss Eastman's work follows, on inadequate grounds, the radical tendencies of recent socialistic and labor legislation. The English plan of a uniform scale of compensation administered by the State is favored in preference to the German ideal of a compulsory insurance of the risk through mutual associations of employers and employees, modified to come within our constitutional limitations.

It has only been at the expense of a long and bitter experience in the maiming and losing of lives that we have established the principle of industrial accidents as a risk inherent in the nature



of modern industry and not justly based upon any theory of "personal faults." Ought it not to follow from this theory that "compensation" to a workingman, in the sense of making good his loss, is as mistaken a settlement as was the principle of legal damages assessed by a court against employers? No amount of money can rightly compensate for the life of a husband, son or brother. Nor can damages or legal battles turn a negligent into a careful employer. For that class of accidents which neither public nor corporate foresight can prevent we want neither compensation paid through the Government nor damages assessed by courts, which are legal remedies administered under a theory of commercial equivalents between industrial accidents and human faults. No solution of the problem will be satisfactory which is not in part worked out economically through social agencies rather than legally through the courts.

The "compensation" idea would inevitably involve under most of our state constitutions a settlement of the case dependent upon legal and personal defences, weakened though they may be over the present ones, while either a just or an economical settlement of the matter is dependent upon our removing it from the sphere of personal responsibility and basing it squarely upon the new theory of a risk inherent in the system. Manifestly, neither party can merge its rights in a system and be held at the same time to personal or individual liabilities.

The ultimate cause lies in the combination of human energies imperfectly educated and controlled, operating tremendous mechanical forces imperfectly harnessed and maintained—man and organized industry. The direct causes are as varied as the characters of men and the organization of industry. They cannot be exactly defined by laws. They belong to a system, not to individuals. Clearly the remedy must be worked out between the component parts of the system, and must be much more in the nature of an insurance against a known liability than of a compensation for damage done. In brief, the ideal solution lies in an actuarial determination between the industry and its employees of the ratio which this inherent liability plays both in the loss of wages and in the element of cost.

In order to effect an economical settlement with a maximum of help to the injured person, the great waste of legal expenses and litigations must be eliminated. The English plan has made for a decided increase in the amount of litigation. Equity, rather than legal definitions and precedents, can effect a more just settlement, and the principles of equity can control the arbitrations of mutual associations more readily than they can direct formal courts of law. And until all unnecessary litigation is removed and direct settlements are the rule, the real risk to be insured cannot be scientifically or approximately estimated. We have found the injury to result from the condition under which men and modern industrial organizations labor. Only jointly can they properly estimate and assess this risk. The very forces of competition which have exaggerated the dangerous pressure and speed of industry will operate to reduce this factor of the cost when it is a definite concrete item, determined on the basis of the German plan by all the competitors in an industry, and not to be escaped by legal expedients, or rendered ruinously burdensome by unjust verdicts. It will be argued, if the past system has been enormously expensive, wasteful and demoralizing to the existence of good-will between employer and employee, why has not competition sought to escape its burdens by devoting greater attention to the prevention of accidents? The answer lies in the fact that, as long as the law and juries assessed damages irregularly, according to strained doctrines of personal negligence, the attention was focused upon escaping sporadic judgment rather than on a conservation of lives. Judgments have borne little relation to the trade risk, which care and greater expenditure could reduce, but have been determined almost solely by hypothetical assumption of personal fault.

First let us determine this risk as definitely as possible for each industry, freed from all extraneous expenses, and then let it become a subject for competitive reduction. The determination of this risk is not an easy matter. It cannot be determined by commissions, legislatures or laws, and in a healthy state of industry it should be a constantly changing and reducing factor. It must be fixed with full publicity on the basis of a known experience, by all of the shops of a competing industry. The



rates should be published yearly, with the increases or decreases which the variations of risk have developed in each factory. Here was the great wisdom of the German system. It developed a plan of mutual insurance between employers and employees, but compelled all shops to reinsure their risk in an association of all of the competitors of like trades or industries. The English system of a flat compensation for all trades offers no such compelling force, which is rather still directed toward escaping the multiplication of litigation.

In proportion as competition reduces the cost of insurance it makes for economy in cost of production, i.e., for greater productivity of labor and hence for a higher average wage. No socialistic sophistries can weaken the principle of common sense. The more the average workingman can produce, the more valuable he must become; the more he limits his average output, the less he is worth.

"State compensation" laws, so called, in that they have eliminated many technical defences and have substituted a limited and fixed liability in place of an unlimited one, have simplified litigation, if they have not reduced its volume. But mutual associations, operating on the plan of the removal of all defences except that of willful or gross negligence, and substituting a rapid arbitration system for a slow legal one, can practically eliminate all waste. In the cost of maintenance also the mutual system is the least expensive, in that it pays its benefits directly to the injured person without the intermediary of a state official or a legal determination. For the same reason the settlement is more expeditiously made, which is a very important consideration.

Any method of settlement to be effective must practically remove in the case of injuries in the hazardous trades all of the old defences of contributory negligence, assumption of the trade risk, and assumption of the risk from fellow servants. But the general removal of these defences involves serious difficulties in connection with the hand trades, domestic and agricultural employments, and all those in fact to which the doctrines of personal liability would historically and still truly apply. A classification of trades into mutual associations of like risks and character overcomes this difficulty, and allows for an elasticity of

treatment according to the nature of the work, which is impossible under the compensation plan.

Finally, it is argued by Miss Eastman and the adherents of the compensation plan, that no American community or State would submit to the amount of supervision and government regulation of everyday affairs which the mutual insurance idea involves. Can we assume, because we are not ready for all of the German paternal industrial policy, that we cannot adapt the essentials of it to a particular set of conditions? The writer believes that a rational plan can be framed which would involve less of government action than results from present litigation, and less than would be necessitated by the State and court settlements of rigid compensation acts. It would require the creation of no new executive departments over those now existing in Connecticut and in most of the States of the Union, though their effectiveness and efficiency might have to be materially increased.

The outline of such a plan for Connecticut follows:

1. Amend and unify the present laws governing the giving of notice of all accidents on railroads to the Railroad Commission and of accidents in manufacturing and mercantile establishments to the Factory Inspector, so that the returns cover all accidents which result in disability for more than one week. The return to the Railroad Commissioner (Public Utility Commission) and that to the Factory Inspector should describe all the mechanical, personal and working conditions with sufficient detail (a) to indicate the cause of, and the responsibility for, the injury, and (b) to assist in studying safety devices, and means for the prevention of accidents and of testing their efficiency. Connected with the above should be a return to the Insurance Commissioner giving (a) the rate of wages of the injured person, his age, nationality, occupation, and number of persons dependent upon his support, (b) the amount of insurance or compensation in any form paid to the injured person or his dependents, (c) the method by which the insurance was carried, and any other details necessary to perfect a reliable accident and sickness experience table of Connecticut. The statistics in regard to sickness under the benefit associations described later should be furnished directly to the Insurance Commissioner by means of quarterly



or annual reports from the associations. All of the above returns should be made on blanks furnished by the various commissioners and approved by the Attorney-General. Attach a sufficient penalty to their non-execution to secure a prompt compliance with the law.

2. Authorize the employment, as assistants to the Railroad Commissioner (Public Utility Commission) and to the Factory Inspector, of skilled engineers, whose duties shall consist in investigating every serious accident, with a view to prevention; and also in studying, testing, and demonstrating devices for the protection of employees from accidents and means of safeguarding their health.

3. Compel the installation, on the order of either the Factory Inspector or the Railroad Commissioner, as the case may require, of approved and demonstrated safety devices, with a limited right of appeal on the part of any aggrieved employers to the Superior Court. The cost of safety devices which could be ordered installed in any one establishment or on any railroad in any one year might be limited to a cost not to exceed a certain per cent. of the pay roll for the preceding year.

4. Give a right of appeal to the Superior Court, but let such cases have precedence, if possible, so as to avoid one of the worst features of the present system in long and expensive litigation. Such appeals should be limited to the following questions:

(a) All orders of any commission regarding means for the prevention of accidents, protection of health, or the installation of safety devices to stand unless disapproved on an appeal to the Superior Court; such appeal to be confined solely to the question of reasonable effectiveness, and cost in excess of the limit established.

(b) All questions as to the amount or right to insurance to be subject to appeal from the decision of the benefit association trustees (described in Section 6) to the Commissioner of Insurance, whose decision is to stand unless reversed on an appeal to the Superior Court. As the court would then have jurisdiction under this act only in the cases of individuals who had previously agreed to the abrogation of all the troublesome legal defences and pleadings, the appeals, if they ultimately reached the court,

would be limited to the interpretation of the "Connecticut State Plan," regulations of the associations, and as to whether a given case was chargeable as sickness or injury in the service. The great majority of such questions would have been settled by the two previous appeals.

5. Outline an industrial insurance plan for accidents and sickness, to be known as the "Connecticut State Plan." Under this plan accident benefits are to be paid automatically at the employer's expense to any individual insured under the state plan without any other question as to the employer's legal liability than as to whether the injury was due to the person's own willful or gross carelessness, or disobedience of rules reasonably designed for the protection of employees. The accident benefits to be:

(a) In case of death, three years' wages and reasonable funeral expenses of \$100.

(b) In case of total incapacity, half pay during the continuance of disability, excepting the first three days, for a maximum of six years.

(c) In case of partial incapacity, after the resumption of work, one-half the difference between the wages earned before and after the injury. Such partial incapacity benefits continue for such part of the six years as the total incapacity benefits have not been paid.

(d) In all cases of accidents, medical and surgical attendance and artificial limbs where necessary, to be provided at the expense of the employer.

(e) One per cent. to be added to the above accident benefits for every year of service over five; and in the case of married persons supporting families, five per cent. for each child, until a maximum increase of twenty-five per cent. is reached.

The sick benefits, which would be supported by contributions of the employees, would be paid in all cases of sickness (or injury other than those suffered in the service) at the rate of one-half pay for the first fifty-two weeks (excepting the first six days), and one-quarter pay for the second fifty-two weeks; and in case of death, one-half of one years' wages.

Such a plan abrogates the present defences of fellow servant, assumption of trade risk and contributory negligence, and substi-



tutes in place of legal damages a definite and limited scale of insurance dependent in all cases upon the efficiency, as expressed in wages, of the injured person; hence, to be limited by neither minimum nor maximum benefits. Accidents due to gross carelessness are classed as sickness and supported by the employees' fund.

6. This insurance to be carried at the option of the employer in any of the following ways:

(a) By the formation of mutual benefit associations between an individual employer and his employees; or by the joining of two or more employers and their employees to form such associations. These associations must charge premiums satisfactory to the Insurance Commissioner; must formulate regulations in conformity with the "Connecticut State Plan"; must satisfy the Commissioner as to their solvency; must be governed by boards of trustees, of whom one-half represent the employers and one-half the employees. Such associations must send an annual statement to, and always be subject to inspection by, the Insurance Commissioner. They must adjust premiums at stated periods, subject to the approval of the Commissioner, and in joint associations may penalize by higher premiums those establishments in which the cost of either the sickness or accidents has exceeded the average rate of these risks.

(b) The insurance may be carried by reinsurance in casualty companies approved by the Insurance Commissioner, on policies which conform with the "Connecticut State Plan," the employer to pay the accident premium and the employees to pay those for sickness.

(c) Either individual employers or joint associations of employers who do not employ hands enough, or are not strong enough financially to carry the "Connecticut State Plan," and who prefer not to insure in casualty companies, may, with the approval of the Insurance Commissioner, form individual or joint associations, which pay a small additional premium to the State to guarantee the plan.

7. When the introduction of the "Connecticut State Plan" has been approved by two-thirds or more of the employees in any establishment or railroad, its acceptance by new employees is to

be assumed without a contract unless the individual expressly dissents. Until such two-thirds consent has been obtained a contract with every individual is necessary. In the case of all contracts with individuals, however carried, and also in the case of assumed contracts, every employer is relieved from any other liability than that fixed by the "Connecticut State Plan," interpreted by successive appeals to association trustees, the Insurance Commissioner, and the Superior Court. Any individual who declines to come under the insurance plan retains his common and statutory law privileges, and against him the employer may plead all the present defences.

8. The expenses of operating the benefit associations are to be charged annually against the employer and the employees' fund, in the ratio of the accident and sick benefits paid during that year.

9. The statutory limit of \$5,000 for death claims from accidents should be removed, and the dependent beneficiaries of the deceased person should be allowed to recover such proportion of the man's average wages for his expectancy of life (less his personal living expenses) as had been devoted for the year previous to his decease to the support of dependents.

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## ECONOMIC PHASES OF THE RAILROAD RATE CONTROVERSY.

### CONTENTS.

I. *Progress of Federal Rate Control.* Rate regulation since the creation of the Interstate Commerce Commission, p. 368; the Taft legislative programme and the circumstances leading to higher rates, p. 271. II. *Rates and the Economic Situation of American Railroads.* Changing character of railroad development in the United States, p. 272; diminishing rate of return on new railroad capital as a basis for higher rates, p. 274. III. *Perplexities in Determining Railroad Operating Costs and Net Return on Capital Investment.* Erroneous use of railroad statistics, p. 277; criticisms of the new system of uniform railroad accounts, p. 278; capitalization and physical valuation as a basis of rates, p. 281. IV. *Sectional Competition and Rate Adjustments.* The power of the Interstate Commerce Commission over traffic relationships, p. 283; this power upheld in the Missouri River rate cases, p. 283; "water competition" and the influence of changing economic conditions on rate adjustments, p. 284. V. *Probable Effects of the Rate making Power.* The need of a broad theory of rate making, p. 287; likelihood of further control over railroad operations and the adoption of the "distance principle" in rate making, p. 288.

### I. *The Progress of Federal Rate Control.*

SINCE the passage of the Act of 1887 creating the Interstate Commerce Commission, Federal control over railroads in the United States has been broadened and intensified. Each amendatory act or supplementary statute has augmented the powers and duties of the Interstate Commerce Commission, until no other tribunal of the Government has, at present, such extensive functions or is burdened with such onerous duties. Primarily established to detect rate discriminations and abuses, the Interstate Commerce Commission has developed an organization for determining and controlling the rate making as well as the operating activities of the railroads.

The original Interstate Commerce Act of February 4, 1887, failed to accomplish fully its purpose. No definite theory for determining reasonable rates or discriminations had been devised, and none could be adopted without the sanction and approval

of the courts. The lack of definiteness in the wording of the law, especially in the "long and short haul" clause, resulted in a series of conflicting legal opinions which greatly hindered the Commission in its activities. At the beginning the Commission refrained from claiming the right to prescribe "reasonable" rates, though the fact soon became apparent, that as an effective rate regulative tribunal it must "make" as well as "break" rates. The Commission endeavored as far as possible to enlarge its usefulness by assuming the power of prescribing specific rates in lieu of those condemned as unreasonable. The legality of this process, however, was disputed, and when submitted to the courts, failed to receive judicial approval.<sup>1</sup>

Legal decisions and legislative enactments during the first twenty years of its activities reduced the Interstate Commerce Commission to a mere court of inquiry. Inasmuch as appeals from the decisions of the Commission necessitated an entire review of evidence, nothing was gained from its labors, either in the expedition or final adjudication of rate controversies. During this period the Interstate Commerce Commission, moreover, was not concerned with the reasonableness of the general scale of freight charges, chiefly because of the absence of serious complaints on this score. Modifications in freight classifications in 1900, combined with the public dissatisfaction over the inefficacy of the Interstate Commerce Act, made the question of freight rates prominent. About this time, also, traffic congestion on the railroads produced unsatisfactory transportation service, the outcome of which was a clamor for additional legislation, culminating in the Hepburn Act of June, 1906.

The Hepburn Act as finally passed, though it granted the Commission power to prescribe a rate in lieu of one declared unreasonable, was merely a stepping-stone to complete rate control. It was well understood at the time that there would be further legislation regulating freight rates. The provision for uniformity and control of railroad accounts, for example, was merely an instrument in the hands of the Commission for

<sup>1</sup> *New Orleans and Texas Pacific Railway vs. Interstate Commerce Commission*, 162 U. S., 184; also "*Maximum Freight Rate*" Decision, 167 U. S., 479.



the determination of "reasonableness" in railroad charges with reference to revenues and earning power. The system of accounts subsequently prescribed in accordance with the Act has this object primarily in view.<sup>2</sup> Moreover, as a supplementary measure, the Commission further urges a physical valuation of railroad property and complete control over the purely financial operations of the railroads.

During the period of legislative agitation resulting in the Hepburn Act, the railroads were experiencing larger growth in business than was warranted by developments and improvements in facilities. The period of feverish business expansion which preceded the panic of 1907 found the railroads unable to handle traffic with the efficiency and economy required by modern standards of railway service.<sup>3</sup> While gross earnings increased in a satisfactory manner, the net return from the additional business was not in proportion to the growth in revenues. The need of better railway facilities was emphasized by the heads of large railway systems. Both Mr. J. J. Hill and Mr. E. H. Harriman, in widely quoted interviews, called attention to the limits that had been reached in the economic operation of railroad properties, and the reports of the Interstate Commerce Commission during this period likewise stated "that the facilities of the carriers had not kept pace with the commercial growth of the country."<sup>4</sup> Endeavoring to overcome this condition, the leading railroad systems inaugurated large programmes of extensions and betterments. The resulting capital flotations, however, overburdened the securities market and caused a decline in security values. To obtain much-needed capital, the strongest railroads found it necessary to issue short term obligations at high interest rates or resort to new issues of capital stock. The panic of 1907, though largely curtailing railroad development and postponing contemplated advances of freight rates, was not without certain compensation

<sup>2</sup> Statistics of Railways, 1908, pp. 9, 12. See also H. C. Adams, "Administrative Supervision under the Twentieth Section of the Act to Regulate Commerce," *Quarterly Journal of Economics*, Vol. xxii, No. 3.

<sup>3</sup> Cf. *The Financial and Commercial Chronicle*, Vol. 84, pp. 124, 127, 660, 899, etc.

<sup>4</sup> Interstate Commerce Commission Report, 1906, p. 17.

to the railroads. Because their lines were not overwhelmed with congested traffic, railroad managers were enabled to cut down operating costs. The ratio of expenses to revenues was reduced in many cases to a normal level.<sup>5</sup>

The return of prosperity following the presidential election of 1908 brought a renewal of the railroad conditions which had prevailed just previous to the panic. Heavy expenditures for maintenance and for equipment were accompanied by new activity in betterments and extensions. Operating ratios again showed an upward tendency, exceeding in some cases those of 1906 and 1907.<sup>5a</sup> At the same time, unfavorable money conditions rendered additional capital flotations extremely difficult. In order to improve the market for new securities, dividends on outstanding shares were in some cases increased, and as a means of compensation for heavy capital expenditures and advancing operating costs, a programme of higher freight rates was inaugurated.

At this stage in railroad affairs came the determined move of President Taft to complete the Roosevelt policies of railroad control. In a message to Congress, the President recommended a revision of the Interstate Commerce Law which should provide for: (1) The establishment of a court of commerce with appeal to the Supreme Court only; (2) the empowering of the Interstate Commerce Commission with the right to suspend proposed rate increases pending investigation as to reasonableness; (3) the Federal control over the capital flotations of the

<sup>5</sup> The statistics of the ratios of operating expenses to gross earnings, as compiled by the Interstate Commerce Commission at this time, are misleading in that the annual fluctuations shown are "due to the varying policy of carriers in regard to charging improvements to operating expenses" rather than to actual changes in operating conditions. See *Statistics of Railways in the United States*, 1907, p. 109.

<sup>5a</sup> At the recent rate hearings, the President of the Chicago, Milwaukee & St. Paul Railroad testified that the prime cause of the growth in operating expense on the lines of his company was "too much business," which resulted in a faster growth in the unit of cost than in the unit of income. Referring to this statement, Commissioner Lane, who was present at the hearing, remarked that, under the circumstances, constantly increasing rates may be expected, and this he "regarded as a serious menace to the western country." The conclusion is reasonable and logical, if inadequate facilities and congested traffic are to become a "chronic" condition of American railroads.



railroads; (4) the prohibition of acquisition of interests in competing lines, and (5) the authorization of pooling.

These recommendations were not enthusiastically received by Congress, and attracted very little attention even from the railroad interests. With the exception of the provision empowering the suspension of rate increases, nothing in the proposed legislation was regarded by the railroads as unfriendly. The new law, as finally enacted, made no provisions for pooling arrangements, for the acquisition of interests in competing lines, or for the control of railroad capitalization. The matter of rates seemed to be the crucial question. The fact that the railroads, on the eve of the passage of the law, announced freight rate advances (which were met by summary action on the part of the Attorney-General to prevent the rates from going into effect), led the public to recognize the seriousness of the railroad-rate problem.

## II. *Rates and Economic Situation of American Railroads.*

The fundamental importance of the freight-rate controversy as affecting the general economic situation in the United States can hardly be exaggerated. Probably in no other civilized country do railroads play as important a part in economic and industrial development as they do in the United States. The long distances separating leading industrial centers, the varying character of geographical divisions, the diversity of natural resources and the broad expanses of undeveloped and partially developed territory, all combine to make the great transportation agencies foremost factors in industrial affairs. Railroad progress, both physical and financial, is, therefore, a matter of grave public concern. Because of its comprehensive powers, notably in rate adjustments, the weight of responsibility attaching to the Interstate Commerce Commission is as heavy as that of the highest tribunal of the Federal Government.

The peculiar situation of American railroads at the present time intensifies the responsibility. In line with the trend of American economic progress, the railroads have reached a new stage of development. Extensions and improvements in transportation facilities are undertaken on a different basis than

during earlier years of national expansion. Having already acquired advantageous territorial connections, the future developments of American railroads (with the exception of the North-western lines) will be largely confined to physical betterments. The growth in traffic of all kinds necessitates improvements in the form of additional main tracks, revision of grades and curves, automatic-signal installations, larger yards, sidings, stations, terminals, etc. Though these improvements undoubtedly increase earning capacity, the gains are not as pronounced as in the case of extensions. New railroad capital does not promise the speculative yield of past years. Through expenditures for increased branch mileage, additional main tracks, larger terminal facilities and similar improvements, not a few railroad companies have become burdened more heavily with fixed charges than is immediately warranted by their present earning capacity.

The records of early railroad building prove that capital is not likely to be risked in new enterprises without the speculative possibility of a larger return than can be obtained from a more secure investment. The encouragement given by the State and Federal Governments through land grants and other subsidies to the early railroads was a matter of necessity rather than choice. Much traffic is necessary for profit in railroad operation; consequently, unless a line is built in a well-settled territory not already tapped by competing lines, the profits are purely speculative.

The example of the French Government in encouraging the extension of railroad systems shows the necessity of subsidizing railroad construction in unremunerative sections. In 1859, the French Government, wishing to create a new network of lines radiating from each of its six great systems, undertook to guarantee the interest and principal on the private capital expended for this purpose, and as late as 1883 the Government, realizing that additional railroad extensions were not immediately profitable, authorized the companies for a series of years to charge all deficits in the operations of new subsidiary lines to capital account.

The standard railroads of America have been enabled to develop and expand without State guarantee of interest charges and without excessive capital obligations, largely because of the so-called "American financiering policy," which aims to main-



tain the company's credit by developing the property from surplus earnings and not by increased capitalization. During the last thirty years enormous expenditures for new railroad construction and for additions and betterments have been made from current income, and largely because of this the leading railroads have succeeded in maintaining and increasing the return to shareholders.

The superiority of the American system is manifest when contrasted with the methods of British railroads. The latter charge revenue with only the amount necessary to keep the line at its original efficiency; practically all additions to rolling stock and all kinds of extensions and betterments are charged to capital. After that, the profits are divided up to the hilt among the bondholders and shareholders. British railroads, for example, charge the cost of widening existing lines to capital, whether or not the widening is done to increase earning capacity. The expense of installing safety devices and other improvements required by law also has been made a capital charge. In fact, the Act of Parliament of 1889, requiring automatic brakes and the block system, specifically authorized bond issues to carry out its provisions.<sup>6</sup>

The conditions under which the British railroads operate, however, have been different from those of the American companies. No large extensions were ever required in England to connect important traffic centers, as was the case in the United States. Consequently, British railway development has been limited mainly to improvements in physical structure which are not usually highly remunerative. The progress of some of the most important American railroad systems is now closely akin to that of the more developed English companies, in that new capital expended on their lines is relatively less remunerative than in previous years. This may arise from:

- (1) Small earning capacity of branch mileage.
- (2) Limits in operating economies.
- (3) Higher standards of railroad service.

<sup>6</sup>As a result of the policy of charging betterments to capital instead of to revenue, the capitalization of the British railroads, inclusive of nominal additions, stood at the end of 1907 at £396,593,636 more than in 1890, although the increase in line was but 3,035 miles.

These will be considered briefly in turn.

1. Although it is true in most cases that branch mileage adds to traffic and earning power, the net return therefrom, as measured by the cost of the extension, is frequently lower than the profit from the main lines. No system of railroad accounting has yet been evolved which can satisfactorily distinguish in branch mileage between "feeders" and "suckers." Moreover, the extension of branches into unremunerative territory is not evidence that a net return is immediately expected. Branch mileage and extensions are frequently constructed merely to ward off competition, or for political and remotely speculative reasons. Speculative railroad building is undoubtedly an evil because of capital waste, but the incidental results sometimes justify the expenditure of capital.<sup>7</sup>

2. To students of railroad development it is apparent that economies in operation resulting from new inventions and improvements gradually tend to reach a diminishing point. The railroad is not a recent innovation; consequently, improvements in roadbed and equipment, as well as in traffic methods designed for lower operating costs, constantly diminish in importance.<sup>8</sup> This circumstance, however, may be partially or wholly offset by reason of increased traffic density and heavier car loading arising from growth in population and wealth. *The determining factor in the problem is whether the heavier traffic and more economical loading has been the result of larger capital expenditure than is warranted by the increased profits thereby obtained.*

3. The matter of higher standards of railroad service, in both freight and passenger traffic, is an important consideration in the

<sup>7</sup> The Interstate Commerce Commission, in the supplementary report on the Spokane case, remarks as follows concerning branch mileage:

"If the branch lines of a railroad are judiciously planned and constructed, they should certainly be taken into account in determining the value of the railway, for although they may not earn a large return upon the cost, considered as an independent proposition, they do add to the traffic and the earning power of the entire system. But here again it must be assumed that these new branches which have been constructed are good investments, otherwise they would not have been built, and that they will add to the earnings of the property in proportion as they have added to its cost. No increase in rates should be called for on this account."

<sup>8</sup> See statement of Mr. E. H. Harriman quoted in *The Chronicle*, Vol. 84, p. 660.



rate controversy. This is an issue determined largely by public demand or by competition, and hence is not discretionary with the transportation companies. Much of the anti-railroad sentiment of 1906 and 1907 may be ascribed to the inability of certain lines to render efficiently the services required of them.<sup>9</sup> Federal and State regulations and restrictions have assisted in the movement for improved transportation services. Requirements as to safety appliances and the use of better signal systems have entailed large capital expenditures without corresponding net return, while special types of cars, larger terminal facilities and the elimination of grade crossings have enhanced construction costs until to-day a mile of roadbed or a unit of equipment denotes a decidedly larger capital investment than a decade ago.

Aside from these conditions tending to increase railroad capital requirements with a diminishing rate of return, the railroads have experienced changes in operating methods and conditions on which they base their demands for larger revenues. The Government, so the railroads assert, laid the foundation for a great increase in wages of railway employees during the past few years and, though it may be assumed that such advances were abstractly desirable in producing better efficiency, a heavy burden in operating charges is the direct outcome. The question of wages has obviously a closer relation to rates than capital expenditure, since more than one-half of operating expense is paid directly to labor. The demands of the railroad employees' associations for standardized conditions of labor, i. e., the same hours and the same pay for like services on all lines regardless of the difference in their financial and traffic conditions, have subjected the weaker roads to a burden in operating expenses which they are unable to shift except by demanding increased revenue from the public. A further factor on which the railroads have been basing rate advances is the reputed higher prices of materials. Combined with higher wages, increased cost of materials, they assert, by diminishing the purchasing power of earnings is a just ground on which to base the claim for advanced rates.

<sup>9</sup> See *The Chronicle*, Vol. 84, p. 361.

The railroads have offered voluminous statistics endeavoring to prove their contentions in these matters. The shippers, on the other hand, have hotly contested the validity of the railroad arguments. Through their own organizations they have compiled statistics which indicate that the railroads have been making money in spite of higher costs, and that the net income per mile, freight earnings per train mile, and dividend rates on railstocks have materially increased during recent years.<sup>10</sup>

### III. *Perplexities in Determining Railroad Operating Costs and a Just Return on Capital Investment.*

As is usual in economic controversies, the arguments set forth by both railroads and shippers in the present rate dispute are too general and too sweeping. The exaggerated statements emanating from the propaganda of the opposing parties are not designed to promote an intelligent solution of the problem. The misuse of railroad statistics, centered for the most part in the "per mile of line" unit of measurement, has become a common evil. Although useful for certain purposes in compiling railroad data, the "mile of line" is wholly inadequate as a gauge of railroad progress. It omits changes in important details of structure or methods of operation. A "mile of line" of the principal railroads to-day represents larger capital investment and greater concentration of engineering and mechanical skill than a decade ago. Further-

<sup>10</sup> Regarding the counterclaims of the railroads and shippers, the Interstate Commerce Commission in a recent case remarked:

"It is well understood that in recent years there has been a continuous advance in the price of most materials and supplies used in constructing and operating a railroad, that there has been a constant tendency to advance wages, and that all this has tended to increase the cost of operation.

"Upon the other hand, there has been a steady improvement in the method of handling freight; trains are longer; cars are larger and more heavily loaded; grades are easier; the amount hauled by a given engine is greater; the density of traffic is much greater. All this tends to reduce the cost of transportation.

"These two sets of causes work in opposite directions and tend to balance one another. It is not certain what the net result has been at any time in the past or is to-day. It is not improbable that at the outset the economies of operation more than outweighed the increased cost of labor and supplies, but that of late the reverse has been true."—19 Interstate Commerce Commission Report, p. 222, Opinion No. 1369.



more, as applied to the total railroad mileage in the United States, the "per mile of line" unit covers such great variety and diversity of railroad structures that its usefulness for comparative purposes is almost wholly nullified.

It is because of the difficulty of arriving at a satisfactory stable unit that railway operating statistics are extremely troublesome to formulate. There are many factors to be considered outside of the bare figures and the relative values of these factors are constantly changing. All modern countries desire a satisfactory standard unit by which operating results as between different railroads and at different periods of time may be unmistakably presented to the public. Uniformity of statistics, however, does not admit of an actual and final comparison of one railway with another, or of the operations of one period with another period, nor do "averages" covering an endless variety of lines and systems form a wholly reliable basis for judging actual results. The Pennsylvania and the Philadelphia & Reading Railroads, for example, are ordinarily held to be competing roads of the same standard of financial soundness and operating efficiency. The Pennsylvania, however, has a traffic amounting to many times that of the Philadelphia & Reading. Moreover, the characteristics of the two lines are in some respects different. The Reading is practically a terminal road, while the Pennsylvania branches out in all directions and extends over almost half of the Continent, carrying a great volume of through traffic. It is necessary, therefore, in any comparisons between these two systems, to take into account the relative proportions of terminal work, the nature of the traffic and the length of the haul. Unless this is done, a comparison of the operating results based entirely on the statistics would be quite misleading.

The system of railroad accounts prescribed by the Interstate Commerce Commission with a view to determine operating costs has met with some serious criticism on the part of railroad managers.<sup>11</sup> The most determined opposition was directed against the enforced maintenance of depreciation accounts, and the strict classification of additions and betterments promulgated with

<sup>11</sup> Cf. Williams, "The Valuation of Railroad Property," in *Proceedings of the American Economic Association*, 1909, pp. 226-8.

special reference to railroad cost-accounting. Among the most active in protesting against the keeping of depreciation accounts were the largest, best-equipped and most conservatively managed railroad companies. Some of these claimed that the renewals and repairs to their equipment were made at a rate which tended to maintain the property at a uniform standard of efficiency at all times. Accordingly, there was no necessity for depreciation accounts on their books. A number of other railroads, including the Pennsylvania, the New York Central and the Norfolk & Western, provided for depreciation of equipment largely through sinking fund charges on their equipment obligations. Probably in no two important railroad systems were the methods of treating depreciation charges identical. Depreciation accounts, similar to reserve and sinking fund accounts, are not necessarily entries of actual and tangible transactions, but are mere records of provisions for current or prospective losses. The money value of the provisions must, therefore, be estimated. The estimates, however, are largely based on experience, and the railroads contend that their managers and directors are capable of attending properly to such matters.

In its classification of additions and betterments, the Commission directed a blow against the creation of hidden assets and the concealment of profits through inflation of current operating expenses. A number of American railroads had gone beyond the recognized principle of charging operating expenses with only the cost of such improvements and betterments as do not produce revenue. By charging productive improvements to operation, they have actually increased their capital assets through current income. The continuation of this practice under the Interstate Commerce Commission's control, would seriously impair the value of railroad accounts as a gauge of actual operating costs. The Commission, therefore, in distinguishing between expenditures chargeable to property accounts and expenditures chargeable to income, applied a rigid rule to all the railroads, regardless of their varying traffic conditions and financial policies. The prescribed rule in replacements and renewals permits operating expense to be charged only with the cost of the original structure replaced, whereas many experienced railroad officers



claim that operating expenses should in all such cases be charged with the full amount that may be necessary to preserve the earning efficiency of the railroad.<sup>11a</sup> They point out that by reason of the larger, heavier, more frequent and more luxurious train service called for by modern traffic, together with the keen competition among the railroads and the demand of the shippers and traveling public for greater facilities and for speed in traveling, it is vitally necessary to charge to operating expenses all extra expense required to preserve the railway in the same general earning status as it was before.<sup>12</sup>

The complexity of railroad organization and railroad activities, combined with the narrow margin of gain from operations, render extremely difficult a completely accurate statement of financial results in the form of brief schedules. Every statement of profits of a going concern, no matter how accurately and scientifically drawn up, is, at best, a mere approximation of the truth. Considerable latitude of variation from exact facts may occur without willful intent to deceive. The earning of profits on the part of railroads, as well as of industrial concerns, represents a continuous operation. Actual results can be definitely stated only when the business is wound up and all assets realized in the form of cash. Moreover, the varying character of the

<sup>11a</sup> In rail replacements, the Commission has ordered that when heavier rails than those replaced are put down the difference in cost arising from additional weight is a capital item and must not be charged against operating revenues. On the Philadelphia & Reading Railroad, this ruling has resulted during the year ended June 30, 1910, in an addition of \$158,976 to property account, which in previous years would have been included in maintenance charges.

<sup>12</sup> The question of railway betterments and depreciation was recently under discussion in Great Britain. The committee of the Board of Trade appointed to inquire into the matter unanimously agreed that the management of each company should be permitted to decide what expenses were mere maintenance and what were betterments. Mr. H. M. Acworth, who was a member of the Board of Trade Committee, remarks:

"We come then to the conclusion that all interests, the interest alike of the public and of the shareholders, are best served by charging freely, not mere repairs and renewals (i. e., depreciation) against the annual income, but also substantial sums for additions and improvements, and, further, for what perhaps might be described as contingencies. In other words, the real test of what part of the gross income is net income is, not whether the physical corpus of the property has been adequately kept up, but whether the earning power of the undertaking as a whole is being maintained."—"Railroad Accounting in America vs. England," *North American Review*, March, 1910.

railroad companies under the jurisdiction of the Interstate Commerce Commission leads to many difficulties in determining their net incomes on an equitable basis. The endeavor to obviate these difficulties by uniform classification of accounts can be only partially successful. Accounting methods in large systems are frequently impractical when applied to small roads. Capitalized items of expense in one case may be properly considered as charges against income in the other, and large capitalization of a well-equipped system may effect a showing of operating profits which would be entirely wiped out under a smaller scale of capital investment.<sup>13</sup>

The more attention given to the question of capitalization in connection with railroad rates, the harder this aspect of the problem becomes. Not only is the Commission unprovided with sufficient facts about capitalization, physical valuation and the other matters that are connected therewith, but there is very strenuous resistance on the part of the roads to any inquiry having in view the basing of capitalization exclusively on physical valuation. When to this is added the contention that capitalization does not bear any important relationship to rates, it can be seen that the endeavor to bring in the "fair return on capital investment" argument as a basis of determining reasonableness of rates will not be altogether easy of accomplishment. Yet the fixing of rates without any reference as to whether or not the roads affected will be thereby enabled to pay interest on their outstanding securities may lead to widespread financial disturbance and a renewal of railroad receiverships and reorganizations. Vice President Miller of the Wabash, at the hearing in the Western Rate cases at Chicago, cited his company as an example of a "weak" road. In the five years that he had been with it not a dollar was paid on the capital stock. Its income was hardly enough to keep the road in a fairly efficient condition by making necessary repairs. Although operating revenues had risen, the operating expenses had increased out of all proportion, this being

<sup>13</sup> The Interstate Commerce Commission prescribes a form of report for small roads (with mileage 250 miles or less and having operating revenues of not more than \$1,000,000) which differs from that of large roads only in the reduction of a number of items required in the statements of accounts.



due mainly to advance in wages and costs of materials. Requirements for safety appliances, limitation of hours and the strengthening of train crews had added to expense without increase of receipts. The position of a financially weak railroad, with credit too poor to enable it to raise the capital needed for improvements and extensions, thus appears to be a hard one.

In certain recent cases the Commission has shown a tendency to recognize the principle that a rate should be such as to allow a profit to the weaker or less favorably situated, as well as the strongest lines serving a given territory, though they have never intimated that the rate shall be fixed solely with reference to the weakest line.<sup>14</sup> In decisions relating to rates in the Cincinnati region one or two recent statements from the Commission have been to the effect that while a rate of say 24 cents would be reasonable, the roads should be allowed to charge up to say 38 cents, because a weak road serving two places in neighboring competing territory could not get along without that amount of remuneration. Opposition on the part of shippers has developed against this point of view, as it would signify, if carried to its logical extreme, that the shipping public should be called upon to pay in the aggregate enough money in railroad rates to enable all the roads, however much overcapitalized, to pay interest and dividends on their securities.<sup>15</sup>

Realizing the logical conclusions of the "weak" roads' argument, the Commission has been urging "physical valuation of railroad property" in lieu of par of outstanding securities as a basis of measuring a just return on capital investment.<sup>16</sup> Yet, even though advocating valuation, the Commission does not con-

<sup>14</sup> See 19 Interstate Commerce Commission Report, Opinion No. 1364.

<sup>15</sup> The Commission, in the Spokane case, said:

"The City of Spokane could not develop if served by the Great Northern Railway alone; nor can we look wholly to the interest of Spokane. The whole territory served by these defendant lines must be considered and the existence of all these railroads to that territory is absolutely essential. These railroads cannot exist unless rates are established which will yield a fair return upon their property. We must, therefore, in fixing these rates, have regard not altogether to any one particular road, but to the whole situation, and must consider the effect of whatever order we make upon all these defendants."—15 Interstate Commerce Commission Report, p. 376.

<sup>16</sup> See H. C. Adams in Proceedings of the American Economic Association, 1909, pp. 191-195.

tend that the results can be utilized absolutely as a rate-making basis. In the report which the Commission submitted to Congress on December 24, 1908, the following appears:

It is not essential to this line of thought to express full agreement with the extreme advocates of valuation whose arguments seem to imply that, if the value of the property is known, a reasonable rate can be determined by mathematical calculation. Many other considerations are involved in the problem, notably the manner in which the rate proposed will affect the industrial development of the country.<sup>17</sup>

#### IV. *Sectional Competition and Rate Adjustments.*

Along with the Government's responsibility, in freight rate adjustment, for the solvency of "weak" roads, the problem of traffic distribution must be considered. Probably the most influential factor in forcing the recent railroad bill through Congress in its final form was the profound dissatisfaction of many Western communities with their status in competing with other communities better situated geographically. Those communities were far less concerned about obtaining low rates than about securing such rates as would place them in a favorable competitive position with other sections. It may be expected, therefore, that the Interstate Commerce Commission, in dealing with proposed rate increases, will find itself much more hampered by the conflicting claims of competing localities than by the troubles of determining whether given rates are in themselves reasonable. The Commission can completely alter or destroy traffic relationships by merely reducing some rates and not reducing others. That it has this right has been tentatively upheld by the Supreme Court in the recent decision in the Missouri River Rate cases.<sup>18</sup> The question in these cases was the validity of the Commission's order reducing class rates charged on through freight from the Atlantic seaboard to Missouri River cities. These rates had been made up by adding to the rate from the Atlantic seaboard to the Mississippi River, the full local rate from the Mississippi River crossings to the cities on the Missouri River. Thus the first-class rate per hundred pounds from the seaboard to the Mississippi River was 87 cents, and the rate

<sup>17</sup> Interstate Commerce Commission Report, 1908, pp. 83 and 84.

<sup>18</sup> Interstate Commerce Commission vs. the Chicago, Rock Island & Pacific R. R., et al.



thence to the Missouri River points was 60 cents, making \$1.47 the joint rate. The Commission ordered a reduction to \$1.38, a difference of 9 cents. The Circuit Court in restraining this order of the Commission, held that the reduction gave undue advantages to the Atlantic seaboard manufacturers and jobbers against the competition of manufacturers and jobbers in both intervening Central Traffic Association territory and the Missouri River territory; and that this rearrangement of competitive traffic conditions was not within the powers granted to the Interstate Commerce Commission. The Supreme Court (by a decision of four against three) reversed this judgment.

The problem of traffic distribution on an equitable basis involves consideration of "short and long haul" charges and water competition. Under the law as it stood before the recent amendments, the railroads were practically left to decide for themselves whether a difference of circumstances existed justifying a higher rate for the shorter than for the longer haul, subject to the authority of the Commission to require a change on complaint and after formal hearing. The new law provides that the railroads shall not charge more for a short haul than a longer one over the same line in the same direction except with the express authorization of the Interstate Commerce Commission upon application by the carrier and after investigation. The principal justification for higher shorter haul rates has been competition of water transportation. Through rail rates from the Atlantic to the Pacific seaboard, for example, whenever it was deemed profitable for the railroads to hold the traffic, were made low enough to meet the water rates between these points. The rates to important inland points, even at considerable distance from the coast terminals, were frequently a good deal higher. As a general rule in transcontinental traffic, the rates to "inter-mountain" points, such as Spokane, Salt Lake, Denver and Reno, were made to approximate the charge to the Pacific coast points, plus an additional "back-haul" rate. This made the coast terminal cities the distributing points inland and prevented the growth of interior traffic centers as rivals to those on the coast. Thus, the system of "long and short haul" rates arising from water competition determined to a large extent the location of industries and the geographical development of trade.

A recent decision of the Commission which attracts the most attention with reference to water competition is the supplementary verdict in the Spokane Rate case.<sup>19</sup> In this controversy the most important contention of the railroads was the existence of water competition centering about Spokane. Traffic from the Atlantic seaboard to any destination like Spokane could be moved by water to the coast and thence by rail to the interior point. A competitive rail rate to the interior point, therefore, would be the sum of the water rate plus the rail rate from the coast. As a result of a previous decision, however, the rate to Spokane from the East had been reduced to 75 per cent. of the rate to the coast cities, plus  $16\frac{2}{3}$  per cent. of the local back-haul rate. The coast cities complained that this adjustment gave a competitive advantage to Spokane as a distributing center. The Commission, however, did not accept the contention of the coast cities, but expressed a doubt whether the railroads should be permitted to construct a tariff for the express purpose of compelling the manufacture or the merchandizing of a given commodity at Chicago, or upon the Missouri River, or at any other place. The Commission, moreover, denied that the railroads were at liberty to meet water competition "in whatever way or to whatever extent they see fit." In other words, the railroads will not be allowed to consult merely their own interests or the desire of the communities which they serve.

A further problem involved in the equalization of traffic distribution by means of freight rates is the competition of home-with foreign-made products. The position taken by the Commission with respect to the relation between railroad rates and foreign competition in similar goods is indicated in the recent California citrus fruit cases,<sup>20</sup> in connection with the rates charged on lemons. It was shown in the hearing that the world's supply of lemons is chiefly produced in two localities—Sicily and Southern California. The cost of producing lemons in Sicily is much less than in California, as labor enters largely into the cost of production. In spite of a protective duty of \$1 per hundred pounds (increased by the Payne Tariff Act to \$1.50

<sup>19</sup> *City of Spokane, et al. vs. Northern Pacific, et al.*, Interstate Commerce Commission, Opinion No. 1363.

<sup>20</sup> 19 Interstate Commerce Commission Report, p. 148.



per hundred pounds) the low water transportation charges available to the Sicily lemon prohibited the sale of the California product in territory east of the Mississippi River. The Commission decided that an increase in the rate from \$1.00 to \$1.15 per hundred pounds on California lemons to the Eastern seaboard, established since the passage of the Payne Tariff Act, was exorbitant, and that the old rate of \$1.00 per hundred pounds should be restored, in order to permit the sale of "home grown" lemons in Eastern territory. If the principle inferred from this decision is applied generally, its economic importance cannot be ignored, since it may be made to apply in every instance where the tariff is inadequate to protect against foreign competition.

Aside from the problems of rate adjustment required by the immediate exigencies of trade and traffic distribution, modifications in systems of rates are constantly necessary in a rapidly growing country to keep pace with changing economic conditions.<sup>21</sup> This point is well brought out in the complaint of the Lincoln (Nebraska) Commercial Club, decided April 6, 1908.<sup>22</sup> Concerning this case, Professor Ripley writes:

Lincoln, Nebraska, lies about 55 miles southwest of Omaha. Originally all its supplies came from the East, as both cities were for a time outposts of civilization. The coal supplies came from Iowa and Illinois and the salt from Michigan. On these and most other commodities the rates to Lincoln were made up of a through rate from the East to the Missouri River, plus the local rate on to destination. The city of Lincoln thus paid considerably more than Omaha for all of its supplies. Gradually conditions have changed, until in 1907 it appeared that over half the soft coal consumed in Lincoln was brought from Kansas and Missouri; four-fifths of the lumber from the South and nearly all the rest from the Pacific coast; glass and salt from the gas belt and salt beds of Kansas and a great deal of beet sugar from the western fields. For a large proportion of these and other supplies, Lincoln was actually as near or nearer the point of production than Omaha, and yet the difficulties of effecting an adjustment between rival carriers had prevented any *modification of rates corresponding to these changes in economic conditions.*"<sup>23</sup>

Adaptation to business changes is an essential element of successful railway operation and development. American railroad managers, urged by competitive railroad building, must be

<sup>21</sup> For an excellent discussion of this question see Professor Ripley's "Rate Making in Practice," *Railroad Age Gazette*, June 4, 1909.

<sup>22</sup> Interstate Commerce Commission, Opinion No. 1102.

<sup>23</sup> "Railroad Rate Making in Practice," *Railroad Age Gazette*, June 4, 1909, p. 1167.

active and alert in seeking new territory and new traffic. As Professor Ripley points out, a strong contrast between Europe and the United States lies in the fact that the European railroads generally *take* business as they find it; whereas, the American railroads *make* business.

#### V. *Probable Effect of the Rate Making Power.*

In view of the many perplexities of official rate making the query naturally arises as to how the Interstate Commerce Commission will "find a way out." The broad territorial divisions of the country, the varied interests and the diverse movements of traffic, render an adequate and close supervision of rates by a single tribunal an extremely delicate and difficult task—a task more vital to the country's welfare than the exercise of the taxing power. In the determination of "reasonable rates" the Interstate Commerce Commission, as an administrative necessity, may be compelled to accept some general theory of rate making in spite of perplexities and maladjustments arising from changes in industrial and economic progress. In order to maintain the conditions leading to its acceptance of a rate making basis, the Commission must eventually control every detail of railroad policy. Supervision of capitalization, which will lead in turn to the regulation of railroad extensions and improvements, is an essential corollary to the rate determining power. The trend of Government regulation, moreover, though eliminating the speculative features, may effect a stability of investment value in railway securities. This, however, has by no means been the result in Great Britain, where, in spite of Governmental control over stock and bond issues, the railroads are heavily waterlogged with capital and their securities have materially depreciated.<sup>24</sup>

<sup>24</sup>Mr. H. M. Acworth, while claiming that supervision of the issue of securities has protected stockholders and bondholders from depreciation in the value of their investments, and the general public from overcharges in rates, admits that the English companies are overcapitalized. The laxity of control of fiscal operations of the railroads of Great Britain may be ascribed to the absence of direct Government interest in the finances of the companies. In France, on the other hand, financial control is effective and valuable because of the partnership of the French Government in the ownership and operations of the companies. See Acworth, "The Position of



The prevention of excessive competitive railroad building and of the economic wastes in transportation seems likewise to become a derivative function of the Interstate Commerce Commission. Sectional controversies and political exigencies may be expected to modify administrative policies in these matters, but a natural slackening in the pace of transportation development and a gradual equalization of sectional economic conditions tend to eliminate unfavorable results.

The direct outcome of the rate determining power of the Interstate Commerce Commission is indeed problematical. The element of permanency or rigidity in rates, which has been pointed out as incompatible with changing economic conditions, is not obviated even in the absence of Government rate control. Rate making of itself is such a delicate and complicated task that when a scale of charges is once established, railroad managers, in spite of competitive forces, are loath to make adjustments warranted by changes in traffic conditions. It is from the stereotyped rates of the last three decades that the railroads have lately sought to free themselves by seeking to establish new rate schedules.

Whether rate rigidity will be intensified under the new powers of the Interstate Commerce Commission depends largely on the rate making basis adopted. Warring sectional interests, combined with the intricate economic and political problems involved in the rate controversies, will gradually necessitate the preference of some permanent and simple rule as a guide to reasonableness. Judging from the results in foreign countries, the theory which is likely finally to predominate will hinge on the mileage or distance principle of rates. This basis of railway charges has already received tentative legislative sanction in the "short and long haul" clauses of the Interstate Commerce Act, and since it conforms somewhat to the cost-of-service idea in rate making, there is no good reason to doubt that it will take precedence over others.

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English Railways," *North American Review*, September, 1909; also, Sakolski, "Control of Railroad Accounts in Leading European Countries," *Quarterly Journal of Economics*, August, 1910.

## THE STATISTICAL WORK OF THE FEDERAL GOVERNMENT.

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### CONTENTS.

Early statistical publications, p. 289; populational statistics, p. 292; the Census Bureau, p. 292; census-taking to 1840, and 1850 to 1870, p. 293; census work since 1880, p. 296; establishment of a permanent Bureau of the Census, 1902, p. 297; statistics of commerce, p. 300; the Bureau of Statistics, p. 301; preliminary organization under the act of 1844, p. 301; establishment of the bureau in 1866, p. 303; development of its work, p. 304; transfer to the Department of Commerce and Labor, 1903, p. 306.

THE statistics collected through the efforts of various Federal agencies have been accorded much attention by several generations of competent students, working individually on their own initiative or officially in response to legislative order. The growth of government agencies engaged in statistical investigation, however, and the development of a plan of statistical work on the part of the Federal Government, do not appear to have received attention in any degree proportionate to the examination accorded the product. It is here proposed to study the statistical work of the Federal Government of the United States, and especially the agencies involved, from the adoption of the Constitution down to the present time.

Statistical work by the Federal Government was made a vital part of its functions by the Constitution which brought the government itself into being. Such work was thereby made no incidental item of listed powers or privileges, but the basic document<sup>1</sup> required that an exact arithmetical digest of the "state of the Union" should be made from time to time as a fundamental basis for the apportionment of legislators among the States and as an equalizing influence upon the levy of direct taxes.

The first Federal Congress was thus confronted with the duty of enacting a suitable census law. The obligation was fulfilled

<sup>1</sup> U. S. Constitution, Art. I, §§ 2, 9.



by the passage of an act approved March 1, 1790. Since that date, regular censuses of the American people have been taken, under the authorization and direction of Congress, every ten years.

With the exception of census legislation, no provision for original statistical work was made by Congress until 1819. In the meantime, however, a number of private individuals were issuing statistical volumes, made up largely of material drawn from governmental sources. The favorite topics treated in these volumes were those of commerce and manufactures. As a number of these private publications received aid directly or indirectly out of the Federal Treasury, it will be well to mention them briefly.

In 1794, Tench Coxe published "A View of the United States of America," to which he appended a number of official documents for the years 1790, 1791, and 1792. A number of copies were purchased by the government for distribution among Congressmen and various officials. In 1806, Samuel Blodget, Jr., published his statistical manual,<sup>2</sup> containing a number of tables, official and unofficial, scattered through many pages of rambling text. These tables deal in a general and often incomplete manner with population, wealth, commerce, finance, agriculture, banking, and credit. While the volume shows no internal evidence of governmental coöperation, it was purchased in some numbers by the government.

In May, 1810, Congress added to the other duties of the Third Census enumerators that of taking "an account of manufacturing establishments and manufacturers." All the details of this work were left to the Secretary of the Treasury, who was later directed to employ a person to digest the material so collected. Tench Coxe was entrusted with the task and issued his report in 1813.<sup>3</sup> About one-fourth of the volume is devoted to a discussion of the beneficial importance of manufactures to a country, while the remainder is given up to statistical tables of manufactures by counties.

<sup>2</sup> *Economica: A Statistical Manual for the United States of America*, Washington, 1806, pp. xiv, 202.

<sup>3</sup> *A Statement of the Arts and Manufactures of the United States of America*, Philadelphia, 1813, pp. 233.

Timothy Pitkin, member of Congress from Connecticut, issued a commercial manual in 1814.<sup>4</sup> His introduction is set forth, on the third and fourth pages of the "Advertisement," thus: "As the United States have been considered, and justly so, as the second commercial nation in the world, it cannot be uninteresting to every American citizen to become acquainted with the facts, tending to show, that they are entitled to this rank. Many of the tables, in this collection, were obtained directly from the Treasury books, and have never been published." This volume was an advance over anything issued up to that time, yet was far from covering all the manufacturing institutions of the country. Congress authorized the purchase of 250 copies.

Dr. Adam Seybert, also a member of Congress, published the most comprehensive and valuable of all the early works when he issued his *Statistical Annals*,<sup>5</sup> giving statistics of the population, and commercial, public land, postal, financial, military and naval statistics, for the period 1789 to 1818. The material was secured from official documents, which the author in his preface complains were "too much diffused to be made the subject of immediate reference." Five hundred copies of this work were bought by order of Congress.

The last publications in the group under consideration were the statistical series of George Watterston and Nicholas Biddle Van Zandt.<sup>6</sup> The two issues that appeared were compiled largely from census volumes of 1820 and 1830 and from reports of the Register of the Treasury. Of the first issue Congress authorized the purchase of not over 800 copies, and 750 of the second. The series existed largely on the reputation of Seybert's *Annals*, and died a natural death with the second issue.

We come now to statistical work done under the direction of Congress, or by some regularly organized executive branch of the national government, before the preliminary organization of the Bureau of Statistics in 1844. The earliest statistics called for by Congress were those of alien immigration. An act approved March 2, 1819, instructed the Secretary of State to

<sup>4</sup> *A Statistical View of the Commerce of the United States of America*, Hartford, 1816.

<sup>5</sup> *Statistical Annals*, Philadelphia, 1818, pp. xxvii, 803.

<sup>6</sup> *Tabular Statistical Views of the United States*, Washington, 1828, 1833. Published under the patronage of the Congress of the United States.



report the number and designation of passengers arriving in the United States each year, compiled from reports of the collectors of the different districts. This act laid the foundation of our immigration statistics, and was the precursor of all immigration legislation.

An act of February 10, 1820, entitled "An Act for obtaining accurate statements of the foreign commerce of the United States," directed the Register of the Treasury to prepare annual statistical accounts of foreign commerce, i.e., the kinds, quantities, and values of exports and imports, also navigation employed in foreign trade.

The next office to be drawn into statistical work was the Patent Office, which had been created in 1836. Curiously enough, the statistical work entrusted to the Patent Office had to do, not with patent work, but with agriculture. This work grew into the Department of Agriculture, a development that will be described later.

The foregoing pages have outlined the meager statistical work of the Federal Government before 1844. It will be seen that beyond encouraging a few private statisticians by purchases of their works, and directing already existing offices to collect statistics of immigration, foreign commerce and navigation, and agriculture, but little was accomplished. No statistical bureau had been created, even the census work being thrust upon the State Department; and no plan of any sort for the regular collection and publication of statistics is discernible.

## II.

No bureau of the Federal Government has had so kaleidoscopic a career as the Bureau of the Census. For over a century a temporary bureau, rising phoenix-like every ten years from the ashes of an earlier decade, it has at last reached the dignity of permanence, and has gained a respected place in the department primarily devoted to statistical effort. At the First Census, in 1790, the work of the bureau was carried on under the general direction of the President. Thereafter, for fifty years, it was entrusted to the Secretary of State. When the Interior Department was organized, census work was transferred to it, and

remained for half a century under the supervision of the Secretary of the Interior, his authority being exerted indirectly through the Commissioner of Labor. In 1900, for the first time, the Census Bureau was made an independent office of the Interior Department, with a Director who was responsible at first hand to the Secretary of that Department. Finally, in 1902, it was made a permanent office, coming thereby into its own; and a year later was transferred to the newly created Department of Commerce and Labor, to become thus a cognate branch of the statistical organization of the national government.

Such, in a word, has been the history of the Census Bureau. Its work in the field has been carried on in a variety of ways. For nearly a century the chief agents of the Bureau were the United States district marshals, who acted through assistants appointed by themselves. At the Tenth Census, however, taken in 1880, a special corps of aids-de-camp was created, known as supervisors of census, under whose direction the actual field work was performed. A similar organization has been utilized since 1880, the number of supervisors increasing from 150 in that year to 330 in 1910.

The constitutional provision for a census was the first statistical act of the people of the United States, acting in any governmental capacity. "This provision," it has been said,<sup>7</sup> "was embodied in the Constitution for political reasons wholly, and with no thought of providing for any systematic collections of statistical data beyond the political necessities of the Government. It is true, nevertheless, that under this constitutional requirement the United States was the first country to provide for a regular periodical enumeration of its inhabitants."

The act for taking the First Census was approved March 1, 1790. The word "census" does not appear in the act, "enumeration" being the term used throughout. Although later censuses were supervised by the Secretary of State, the oversight of the First Census was given in a general way to the President, who was supposed to exercise the requisite authority over the Federal marshals locally in charge, and to whom the returns were transmitted direct. The field work extended from August, 1790, to

<sup>7</sup> Carroll D. Wright and William C. Hunt: *History and Growth of the United States Census*, Washington, G. P. O., 1900, p. 13.



the spring of 1791, and the results were issued in a small volume of fifty-six pages.

The censuses of 1800 and 1810 were taken under the same general provisions of law as that of 1790, being little more than simple enumerations of the people, divided into a few main classes according to color and sex, and (in a limited way) according to age. The printed report of the Second Census contained seventy-four pages, and that of the Third Census 180 pages. The industrial statistics of 1810, while gathered by the marshals and their assistants, were provided for in another act than the regular census law of 1810; and being in large measure the result of an afterthought, they were admittedly far from successful.

The Fourth Census was taken under an act of March 14, 1820, which adhered very closely to the original act of 1790, so that the schedule differed but slightly in its classifications from those of the three preceding censuses; in the tenth section of the act, however, a second attempt was made to provide for the collection of other statistics than those relating directly to the population: i. e., statistics of manufacturing establishments and their products, capital invested, employees and wages, and other expenditure. The digest that was issued covering these statistics did not contain an aggregate statement for the whole country—a most serious omission.

The section of the Fourth Census act providing for the collection of industrial statistics, coupled with the act of February 10, 1820, which provided for annual statistics of foreign commerce and navigation, may be said to mark the entry of the government into the field of industrial and commercial, as distinguished from populational, statistics. Every census since 1820 but one<sup>\*</sup> has collected industrial statistics, the scope of the work being gradually enlarged from decade to decade. The census of manufactures has come now to be considered of sufficient importance to be taken quinquennially. Beginning with 1905, it has been made a five-year census, prosecuted under specific legislation and by a corps of special agents and enumerators.

<sup>\*</sup>The census of 1830.

The six censuses from 1790 to 1840 mark the first cycle in American census-taking. Their scope was exceedingly narrow, the periods of enumeration were in all cases unduly extended, and there was throughout a lack of foresight in planning and coherence in executing the task involved.

This lack was recognized as the next census period drew on, and in 1849 a special board was established, comprising three cabinet officers, who were authorized to prepare forms and schedules for the Seventh Census. At the same time, supervision of census work in the future was transferred to the newly created Department of the Interior. Six schedules were prepared by the special census board, and were made a part of the census act of 1850. The schedules dealt with free inhabitants, slaves, mortality, agriculture, industry, and social statistics.

Thus the scope of the census was considerably widened in 1850. In addition, a change was made in the method of enumeration. For the first time the inquiries related directly to the individual as the unit of enumeration, instead of the family; and for the first time the returns were susceptible of detailed classification and tabulation.

The Eighth Census (1860) was taken under the provisions of the act of 1850, following the requirement in that act that any subsequent census should be taken under its provisions if no law therefor was passed before January 1 of the census year. The Ninth Census (1870), too, was taken under the census act of 1850, in spite of the fact that a special committee of the House of Representatives, under the chairmanship of Mr. Garfield, made a careful study of census methods and presented an elaborate historical report containing the draft of a bill for the approaching census. This report passed the House of Representatives, but was defeated by the Senate. The painstaking work of the Garfield committee was not entirely in vain, however, as it furnished the basis for the Tenth Census acts.

The Tenth Census (1880) was taken under a series of acts passed in 1879 and 1880, under the provisions of which a definite census office was created in the Department of the Interior, and the position of Superintendent of the Census established. Five general schedules were provided for, dealing with population,



agriculture, manufactures, mortality, and social statistics. The population, agricultural, and manufacturing schedules were considerably enlarged over those of the previous three censuses.

A new departure was the employment of special agents in 1880 to collect statistics on valuation, taxation, and indebtedness, public schools, newspapers and periodicals, and wages. Several other special enumerations were ordered by Congress, such as the Indian enumeration and the collection of mining, educational, and other statistics.

The census of 1880, judged by the variety of subjects investigated, marked the second cycle in American census-taking. The three censuses taken under the law of 1850 were great improvements over the first six enumerations, yet even the results of these censuses were far from satisfactory. The census of 1880, however, introduced new methods of collecting material and employed experts in making various special investigations required. The result is seen in returns much more complete and accurate than before.

The Eleventh Census act, approved March 1, 1889, closely followed the census act of 1880, much the same schedules of inquiries being authorized. Additional enumerations were provided regarding proprietorship, mortgage indebtedness, Union survivors of the Civil War, and mulattoes, quadroons and octoroons. As in 1880, special agents were largely employed for the additional enumeration work.

The legislation enacted for the Twelfth Census (1900) limited the decennial work proper to four topics: population, agriculture, manufactures, and vital statistics, leaving for special treatment the many subsidiary inquiries which formed a part of the regular reports of 1880 and 1890.

This plan was followed in 1900 throughout. The four general topics were covered each by a volume or set of volumes, which appeared soon after the close of the census period. Thus the first volume on population was dated December 6, 1901, and its companion volume June 6, 1902, just six months later. Two volumes were published on agriculture, two on vital statistics, and four on manufactures. The vital statistics, it may be added, were collected by agents of the census from registration records

in the cities and districts of the so-called "registration area," made up of a rapidly growing number of States, counties, cities, and towns that prescribe and keep sufficiently accurate records of deaths to warrant their use by a Federal statistical bureau. This plan was first put into effect at the census of 1880, when the mortality schedules were partially withdrawn from the enumerators, and replaced by copies of registration records. In 1890 and at both succeeding censuses the mortality schedules were wholly withdrawn from the enumerators.

The statistics of manufactures in 1900 were collected by a special force of agents, who visited the manufacturing and mining establishments of the country and secured data of capitalization, finances, and production. This method has been followed since 1900.

After the close of the census periods in 1890 and 1900, and especially since the creation of the permanent Census Bureau in 1902, series of special reports have been issued by the bureau, among others the annual reports on mortality, and social and financial statistics of large cities; special reports on defective and abnormal classes; bulletins on special industries of all kinds; reports on cotton; also street railway, electric power plant, and other statistics.

We come now to the history of the establishment of the permanent Census Bureau. This had been a dream of statisticians for many years. A House committee as early as 1845 held that the many errors of the Sixth Census formed a powerful argument for the establishment of a permanent statistical bureau, to which, it may be supposed, all future census work might be entrusted. Superintendent De Bow in his *Compendium of the Seventh Census*<sup>9</sup> also urged the necessity of a regular statistical office. He said: "Unless there is machinery in advance at the seat of Government no census can ever be properly taken and published. This office machinery exists in all European countries where statistics are the most reliable, but there has been none of it in the United States. Each census has taken care of itself. The Government may rely upon paying heavily for the experience which is being acquired."

<sup>9</sup> Page 18.



Various reports of the Secretary of the Interior, from 1860 to 1865, either recommended a permanent bureau of statistics, or directly suggested a permanent bureau to take the decennial census. On February 16, 1891, the Senate directed the Secretary of the Interior to draw up a bill for the establishment of a permanent census bureau. This he did, in a document prepared by Superintendent Porter of the Eleventh Census.<sup>10</sup> His report contained favorable opinions, from all classes of people and from organizations throughout the country, on the subject of an established bureau of the census. In 1893 the House Select Committee on the Eleventh Census presented a similar report, urging a permanent bureau on the ground of efficiency and economy, and containing the draft of a bill to establish such a bureau. Neither of these bills was passed by Congress, and no further action was taken until March 19, 1896, when a joint resolution of the two Houses instructed the Commissioner of Labor, Carroll D. Wright, to report a working plan for a permanent census bureau. In the meantime a joint memorial was presented to Congress by the American Economic and American Statistical Associations, pointing out the defects of previous census work, and laying the onus of such defects on three principal features of census work, all of which would be obviated by the establishment of a permanent office, namely:

1. Accumulation of inquiries at the same period of time.
2. Lack of continuity in census work.
3. The haste with which the whole machinery of the census is placed in motion.<sup>11</sup>

There was considerable discussion, along the same line, on the part of many scientific writers.<sup>12</sup>

Commissioner Wright submitted his report December 7, 1896, in the shape of a bill to establish an independent and permanent census office. No result, however, came of his report, although the bill was introduced in both Houses of Congress; and when the legislation for the Twelfth Census was enacted, no provision

<sup>10</sup> Sen. Ex. Doc. No. 1, 52d Cong., 1st Sess.

<sup>11</sup> See Sen. Doc. No. 68, 54th Cong., 2d Sess.

<sup>12</sup> See, for example, Charles W. Dabney, Jr., "A National Department of Science," *Science*, January 15, 1897.

was made for the permanency of the bureau. Not until July 1, 1902, was the office made a permanent one.

Since the establishment of the permanent Census Bureau, eight years ago, it has been engaged chiefly on special work, such as has been entrusted to it by act of Congress<sup>13</sup> or has fallen to its lot in systematizing the statistical work of the Federal Government. In coöperation with other branches of the government, statistics are being constantly gathered, tabulated, and issued. Since 1905, the Census Bureau has been in charge of the statistics of cotton production, formerly collected in the Department of Agriculture. Coöperation is sought not only with the Federal branches of government, but also with State departments, such as State bureaus of labor, State census offices and State health departments and registration offices.<sup>14</sup> It is fair to say that the permanent bureau will justify its first decade by this one feature alone.

In addition, the permanent census office acts as a clearing house of general statistical information for correspondents the country over. It is hard to put the value of this work into definite terms, but the bureau is daily besieged for information by Congressmen, publicists, writers, students, farmers, and men and women in all walks of life. The topics regarding which information is sought vary widely, from a request for a statement of the distribution of unmarried men (naïvely made by a widow), and argumentative treatises submitted by "professors of science" and cranks, to serious requests on the part of teachers, students, and others.

The Thirteenth Census of the United States, tabulation of the results of which is under way at the time this is being written, is the first one undertaken by the permanent bureau, and its progress will be watched with great interest by statistical students and writers. In general, the plan of the 1910 census is similar to that of 1900. The same four divisions of infor-

<sup>13</sup> *Vide* the special reports on Marriage and Divorce, issued by direction of Congress in 1908-1909, and on Religious Bodies, issued in 1910.

<sup>14</sup> For a description of this feature of the Bureau's work, see the report of a committee, entitled "Collaboration in Federal and State Statistical Work," and presented at the twentieth annual convention of the Commissioners of State Labor Bureaus in 1904.



mation are being sought after: population, agriculture, manufactures, and vital statistics. The same methods are largely in use, much the same schedules are being utilized, and the questions required by law have been but little modified. The only important changes in the population schedule have been the addition of one query respecting the mother tongue of each foreign-born person enumerated, and another regarding the industry in which each breadwinner is engaged, as well as the specific occupation.

### III.

Next to populational statistics, both chronologically and in point of assigned importance, come statistics of commerce. To the collection of such statistics considerable attention has been given, and the first permanent statistical bureau organized under Congressional authority was assigned the duty of collecting, tabulating and publishing statistics of American commerce.

The act of February 10, 1820, already touched on above, launched the Federal Government into the collection of commercial statistics. It is true that immigration statistics had been authorized a year earlier, but the collection of statistics of commerce proper was begun in 1820. The act of 1820, which was based upon a report submitted December 20, 1819, by the Senate Committee on Commerce and Manufactures, instructed the Register of the Treasury to report annually statistics of imports and exports, and navigation employed in foreign trade. The information was to be secured from collectors of customs at the various ports, and the task of preparing it for the use of Congress was assigned to a Division of Commerce and Navigation, organized for the purpose under the Register of the Treasury. By this Division regular annual reports of commerce were submitted to Congress until the establishment of the Bureau of Statistics.

Banking statistics were authorized a decade later. By resolution of the House of Representatives on July 10, 1832, the Secretary of the Treasury was directed to lay before the House the returns of the different State banks and banking companies. In accordance with this resolution, more or less regular reports were

made by the Secretary covering the years 1833, 1835 to 1848, 1850, and 1852 to 1863. The last report under this resolution was made December 23, 1863, by Secretary Chase, who recommended its repeal. Action does not appear to have been taken by the House, but no further reports were made under the resolution.

While the Bureau of Statistics was not actually created until 1866, its existence was foreshadowed for over twenty years before that date. On January 29, 1844, the House of Representatives appointed a select committee "to inquire into the expediency of establishing a Bureau of Statistics and Commerce in connection with the Secretary of the Treasury." Zadock Pratt of New York, chairman of the committee, presented three vigorous reports during the following year. The first report was submitted March 8, 1844,<sup>15</sup> and earnestly recommended the establishment of a bureau of statistics as a subsidiary branch of one of the executive departments. Some excerpts from this report will be of interest:

"A statistical bureau would produce the following important and highly desirable results:

"First. By furnishing correct and official information relating to all the great interests of the country, it would prevent unintentional partial legislation in favor of one or more, to the injury of the rest.

"Secondly. It would facilitate legislation. . . .

"Thirdly. The establishment of such a bureau would greatly facilitate the business of the departments. . . .

"Fourthly. Such a bureau would, in a comparatively short time, furnish correct information respecting the commercial, the financial, the navigating and shipping, the manufacturing, and the agricultural interests of the country.

"Fifthly. The duties of the bureau would extend to the arrangement, condensation and elucidation of the statistics of foreign nations, and to all the various branches of international commercial intercourse."

While the appeal of the committee did not at once produce the desired result, yet it roused Congress to pass a resolution, on June 15, 1844, authorizing the Secretary of the Treasury to

<sup>15</sup> House Report No. 301, 28th Cong., 1st Sess.



employ three clerks in the work of "collecting, arranging and classifying such statistical information as may be procured, showing or tending to show each year the condition of the agriculture, manufactures, domestic trade, currency and banks of the several states and territories of the United States." These three clerks formed the nucleus of the future bureau of statistics, and the year 1844, therefore, may be said to mark the first step toward a Federal statistical bureau in the United States.

On January 6, 1845, Secretary of the Treasury Bibb made the first report under the resolution of June 15, 1844, a volume of 419 pages. The material was imperfect and unsatisfactory, no statistics being presented, for example, regarding the banks of a number of important States. In his letter of transmittal the Secretary suggested that the resolution provided him neither sufficient authority nor means to properly collect and put together statistics worthy of American genius and intelligence. "It is respectfully recommended," said the Secretary, "that the information be enlarged to the foreign trade, foreign manufactures, foreign agriculture, foreign products, foreign currency and foreign regulations and restrictions of commerce. This branch of knowledge, so interesting, so important and so eagerly desired, remains as yet, in the United States, veiled in obscurity and mystery. Private fortunes and private means will not—the Congress can, if they will—cause light to shine through the darkness."

Mr. Pratt appended this letter to a report he brought in on February 7, 1845,<sup>16</sup> which was laid on the table. He reported a great development of interest on the part of intelligent men in the establishment of a statistical bureau. This report was shortly followed by another, submitted February 25, 1845, which was entitled "Statistics of the United States," and aimed to prove the efficacy of statistics in the sectional discussion then raging over the country. It was simply an argument, in another form, for a national bureau of statistics. This report, too, was promptly tabled.

The second of the two reports submitted by the Secretary of the Treasury in compliance with the resolution of June 15, 1844,

<sup>16</sup> House Report No. 110, 28th Cong., 2d Sess.

was transmitted March 26, 1846, by Secretary Walker, the information, with the exception of the figures for New York and Massachusetts, being founded largely on estimates furnished by State officers and private individuals. The report comprised 527 pages, and seems to have been the last report submitted under the resolution. The suspension of the work by the Treasury Department at this time has been ascribed to lack of congressional interest and support, and to the diversion caused by the Mexican War. Mr. Pratt's efforts were destined for the time being to be fruitless, but later developments showed that his work was not wholly in vain, and he has been called "the father of the American Statistical bureau."

The Secretary of the Treasury continued to collect, through the Register as provided by law, annual statistics of commerce, navigation, and immigration; in 1856, estimates of coastwise commerce were added by resolution of Congress. These statistics were regularly presented to Congress. It was not until after the Civil War that Mr. Pratt's dream of a bureau of statistics finally came true. The act creating it was approved July 28, 1866, and provided for the establishment of a bureau in the Treasury Department, to be styled "The Bureau of Statistics," with a Director who should prepare and present the reports on commerce and navigation already required of the Secretary by law, also monthly export and import statistics, annual registry statements of United States vessels, statistics of manufactures, transportation, and wages, and such other reports as the Secretary might deem expedient.

The bureau was organized in October, 1866, with the clerks previously employed in the divisions of Commerce and Navigation and of Tonnage, in the Register's office, as a nuclear force.

The office of director, however, was soon abolished by act of July 20, 1868, which appointed the Special Commissioner of the Revenue superintendent of the bureau after the first of January, 1869. On July 1, 1870, the office of Special Commissioner of the Revenue expired by limitation. The Deputy Special Commissioner, who had been for some time acting as chief of the bureau, was placed in full charge, with the title of "Chief of the Bureau of Statistics," a designation afterwards specifically recognized by law.



When the law creating the bureau went into effect, the tonnage division of the Register's office was transferred to it. Seven months later the Secretary of the Treasury decided that this transfer had been the result of a misapprehension as to the respective duties of the Register's office and the Bureau of Statistics, particularly in regard to the issue and cancellation of ships' papers, and accordingly directed the retransfer to the Register's office of the clerks in charge of ships' papers. He also directed, however, that all proper facilities should be afforded the chief of the Bureau of Statistics for obtaining information from the Register's returns, thus avoiding duplication of work by the collectors of customs. Returns continued to be required from collectors by the bureau, indicating that the instructions of the Secretary in this regard were not fully carried out.

In addition, it was attempted by the bureau through the Division of Internal Traffic, organized early in its history, to gather information on a great variety of subjects, "with results so grossly and grotesquely inaccurate as to make the bureau an object of ridicule."<sup>17</sup> This division was accordingly discontinued in 1869. The main reason for its failure to secure definite results was the absence of any legal authority to exact information from corporations or individuals.<sup>18</sup>

The Division of Internal Commerce of the Bureau of Statistics, succeeding the defunct Division of Internal Traffic, was organized in 1875, as the result of a compromise clause in the general appropriation act of March 3, 1875, after a bill providing for the establishment of a bureau of commerce had been defeated in the Senate. The clause called for statistics of internal commerce, and for transportation statistics, including costs of railway construction and operation, water and railway rates, and tonnage figures.

The first report on the internal commerce of the United States, issued on the thirtieth of June, 1876, embodied the results of the

<sup>17</sup> Report of the Commission on the Bureau of Statistics of the Treasury Department, Washington, 1877, p. 69.

<sup>18</sup> In this connection, see the report of Francis A. Walker, in charge of the bureau, for 1869. Only seven per cent. of the manufacturers of the country, representing a bare one per cent. of the total capitalization and products, made any response to the calls of the bureau for information.

first two years' work of this division, and formed a part of the report on commerce and navigation of the Bureau of Statistics. The division was thoroughly reorganized in 1899, and now prepares monthly and yearly summaries of the movements of internal commerce.

In 1877, as a result of considerable criticism of the methods employed in the Bureau of Statistics, Secretary Sherman appointed a commission to investigate its system of conducting business, of collecting, preparing, collating and publishing statistics, and to ascertain what duplication of work, if any, existed. The commission inspected the work of the bureau with great thoroughness and detail, and reported their findings in October, 1877.<sup>19</sup> The report was introduced by a brief review of the statistical work of the Federal Government at that time.

After making a series of recommendations regarding the bureau, the Commission concluded as follows: "The Bureau of Statistics in the Treasury Department, as now constituted by law, can do very little more at present, to cover the wide field of statistical inquiry. Nor, without great, and perhaps revolutionary changes in existing legislation respecting the duties of the Executive Departments, can its duties be enlarged in a satisfactory way. Nor is this Commission, from its own investigation, certain that the power to publish statistical material now existing in the various Departments could be consolidated and transferred to the Bureau of Statistics with justice to them or with good effect, either as regards legislation, administration or public information."<sup>20</sup>

The work of the Bureau of Statistics continued as before, with few modifications, until the establishment of the Department of Commerce and Labor in 1903, to which it was at that time transferred.

In 1878, the Bureau commenced the annual publication of a Statistical Abstract of the United States, containing digests of statistics of all kinds, compiled largely from governmental reports, but partly also from unofficial sources. This publication has grown in size and scope since its first appearance, until to-day

<sup>19</sup> Report of the Commission on the Bureau of Statistics of the Treasury Department, Washington, 1877, p. 140.

<sup>20</sup> *Ibid.*, p. 89.



it comprises a volume of over 700 pages. The percentage of space devoted by the abstract to commerce has recently fallen, being 60 per cent. in 1897 and about 40 per cent. in 1908, indicating the widening scope and variety of the subjects treated. The publication of some such digest as the Statistical Abstract was recommended as early as 1844 by the Pratt Committee, which said:<sup>21</sup> "It is worthy of consideration whether a large amount of money might be saved, if instead of printing many bulky reports and documents, filled with details interesting to very few persons, all the materials they contain were digested and printed in an annual volume. The manuscript documents, together with all the printed reports, etc., above alluded to, should be systematically arranged and bound in volumes, and preserved. Indexes to be prepared of these volumes, so that their contents might easily be referred to, when more particular and detailed information was wanted on any subject than the digest kept by the bureau would furnish."

In addition to the annual Statistical Abstract, the Bureau of Statistics from time to time prepares a cumulative statistical record of the progress of the United States; and there is now in course of preparation a Statistical Abstract of Foreign Countries, of which only the first volume has yet appeared.

An act of July 16, 1892, added the collection of statistics of exports by rail to the functions of the bureau. Every shipper by rail to foreign countries was directed to deliver a manifest to the carrier, and the carrier was to deliver such manifest to some regular agent of the Government. On April 19, 1902, the work of the bureau was further extended to cover statistics of commerce with our noncontiguous territory—Hawaii, Porto Rico, Alaska, Guam, and the Philippine Islands.

The act of 1903, establishing the Department of Commerce and Labor, transferred the Bureau of Statistics from the Treasury Department to the new Department, and enlarged its field of work by creating within the bureau a new section, the Division of Foreign Commerce. This Division was nothing more than the Bureau of Foreign Commerce of the Department of State, now removed from that Department and consolidated

<sup>21</sup> House Rep. No. 301, 28th Cong., 1st Sess.

with the Bureau of Statistics. To understand fully the nature of this transfer and consolidation, it will be necessary to turn back sixty years, and trace the development of the Bureau of Foreign Commerce under the State Department. The origin of that bureau lay in an act approved August 16, 1842, making it the duty of the Secretary of State to report annually to Congress "in a compendious form, all such changes and modifications in the commercial systems of other nations, whether by treaties, duties on imports and exports, or other regulations, as shall have come to the knowledge of the Department." Only three reports were actually made under the act, in 1842, 1843, and 1844, after which work lapsed for a dozen years. On August 18, 1856, Congress again directed the Secretary of State to collect commercial information from consular and diplomatic agents and from the official publications of foreign governments, and to report on it annually. The Secretary was further "authorized to appoint one clerk who shall be called 'Superintendent of Statistics.'" <sup>22</sup> The so-called "Statistical Office" of the State Department had been organized for a temporary piece of work two years before this, and was now, by the terms of this act, made a continuing office. In 1874 Congress changed the title of the office to Bureau of Statistics, so that for a time there were bureaus of statistics both in the State and Treasury departments.

The report on foreign commercial systems issued each year by the State Department under the act of 1856, was entitled "Commercial Relations." For ten years following the establishment of the Bureau of Statistics, Treasury Department, that bureau also published considerable information regarding the commerce and general prosperity of foreign nations, covering ground very similar to that covered by the State Department. The latter Department consequently complained of this duplication of its work, and the Bureau of Statistics, Treasury Department, discontinued the practice.

In 1880 the work of the Bureau of Statistics of the State Department was limited to the preparation of monthly consular reports. This practically marks the withdrawal of the State Department from the field of regular statistical work. On

<sup>22</sup> The office of Superintendent of Statistics was abolished by act of July 20, 1868.



July 1, 1897, the title of the Bureau of Statistics, State Department, was changed to Bureau of Foreign Commerce, to obviate the confusion arising from the existence of two bureaus of statistics in the executive departments; and in 1903, as already stated, the Bureau of Foreign Commerce was formally transferred to and consolidated with the Bureau of Statistics of the Department of Commerce and Labor.

There has been considerable discussion during the past three years as to the advisability of consolidating the Bureau of Statistics and the Census Bureau. A special committee, appointed by the Secretary of Commerce and Labor in 1907, reported adversely on the question, and the bureau seems likely to continue in much the same field of work as that occupied since its inception. At the present time the Bureau of Statistics collects and publishes statistics of foreign commerce, presenting imports and exports, respectively, by countries and customs districts, the inward and outward movement of tonnage in foreign trade, and the countries whence entered and for which cleared. The bureau also collects and publishes information regarding the movements of internal commerce, including coastwise commerce and the commerce of the Great Lakes. The immigration and registry reports formerly prepared by the bureau have been discontinued, being now issued by the Bureau of Immigration and the Bureau of Navigation, respectively.

The bureau's regular sources of information are collectors of customs, and specially appointed agents at interior ports. Occasional sources are mercantile and trade reports, statistical publications of the various States and of foreign governments, and general correspondence carried on by the bureau.

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[NOTE. This article will be concluded in the February number of this REVIEW.—*Editors.*]

## BOOK REVIEWS.

*A Documentary History of American Industrial Society.* Edited by John R. Commons, Ulrich B. Phillips, Eugene A. Gilmore, Helen L. Sumner, and John B. Andrews. Prepared under the auspices of the American Bureau of Industrial Research, with the coöperation of the Carnegie Institution of Washington. With preface by Richard T. Ely and introduction by John B. Clark. Cleveland: The Arthur H. Clark Company, 1910—10 volumes.

Volumes V and VI, "Labor Movement, 1820-1840," edited by John R. Commons and Helen L. Sumner. Volumes VII and VIII, "Labor Movement, 1840-1860," edited by John R. Commons.

It is well to remember the fundamental principle as previously stated by the editor-in-chief, Professor Commons, that it is the extension of markets rather than the technique of production that determines the organization and policies of industrial classes. When the retail merchant began to engage in wholesale trade, price rather than quality became the determining factor. As wages were the important element in fixing the price, a struggle between employer and workingman was inevitable. One phase of that struggle, taken up in previous volumes, was shown in the "Labor Conspiracy Cases." (Reviewed in *YALE REVIEW*, August, 1910.) The present volumes cover another phase, the organization of workingmen, which not only supported the strikes in question, but developed on such a broad scale that it may well be termed a "labor movement." It arose as a protest against the merchant-capitalist system.

A chart accompanies the introduction to these volumes, showing roughly the average movement of wholesale prices during the greater part of the nineteenth century. When prices are rising and the employer is driving his men hard, the workingman is forced to demand higher wages and fewer hours. The labor movement then emerges in the form of unions and strikes, which are at first successful. When the period of depression follows, the labor movement either subsides or changes its form



to political or socialistic agitation. The period under consideration includes the rise of prices culminating in 1825 and in 1836, and ends in the midst of the depression of 1837-1843.

The extension of manhood suffrage between 1820 and 1830 placed in the hands of the laboring man a weapon which he was not slow to use in demanding, among other things, public education, abolition of imprisonment for debt, a modification of the compulsory militia system, and a mechanic's lien that was good for the laborer as well as for the master. Though there had been organizations of labor prior to this time, they had been local societies of individual trades. In 1827, in Philadelphia, there was organized the Mechanics' Union of Trade Associations, the first union of various trades "in the United States, if not in the world." Organized for mutual aid and protection, the Mechanics' Union soon decided that it was necessary for the workingmen to go into politics. Though the Mechanics' Union existed for only a year, the political movement continued through 1831, and the Workingmen's Party was an important factor in local politics until it disappeared in the excitement of the national political issues of 1832 and of Jackson's second administration.

In New York the workingmen's political movement began in 1829, and in the following year spread rapidly throughout the State. Though attended with more immediate success, as in Philadelphia the importance of national questions in 1832 completely overshadowed and finally ended independent political activities.

The New England Association of Farmers, Mechanics and other Workingmen was similar to that of Philadelphia and New York, and the workingmen's party was a distinct factor in Massachusetts politics from 1830 to 1834. There were also organizations in a number of smaller towns in most of the New England States. But by 1834 the workingmen abandoned their more general protest against existing conditions for the more special demands of the trade-union movement.

A new phase of the labor movement began in New York in 1833, and rapidly spread to a dozen or more important cities. This was the formation of local trades' unions which profited by

previous experience and proscribed politics and religion. While the old political issues were not lost sight of, the new issues, such as hours of labor, wages, prices, competition of women, and prison competition, were emphasized. Trades' unions existed prior to 1835, but it was the rise of prices in that year that awoke them to vigorous action.

The culmination of the local trades' unions was the National Trades' Union, 1834-1837, an association of local unions, each of which was composed of local societies of the several trades. The National Trades' Union held annual conventions, composed of delegates from local trades' unions, reached its climax in 1836, and disappeared with the panic of 1837. The convention of 1836 showed the beginnings of disintegration in its expressions as to the hopelessness of strikes, and the attention shown to various panaceas and to legislation. Though "the Trades' Union dwindled and ended where the movement of 1829 began—in politics," its importance lies in the union of separate trades on the basis of the class interest common to all.

Finally, out of the National Trades' Union came the national organizations of local societies within a single trade, beginning in 1835.

These are the subjects in the "awakening period of the labor movement," which the editors have attempted to illustrate in volumes V and VI of the series. That the attempt has not been so successful as in the preceding two volumes on the "Labor Conspiracy Cases" is due to the character of the material, but the service that has been rendered is perhaps all the greater. The sources of information are labor papers, publications of associations, convention proceedings, etc. Sometimes the extracts are extremely scanty, at other times abundant but annoying in their repetition, yet from the whole the student is able to obtain a clear idea of this all-important and greatly neglected side of American history.

When it comes to the interpretation of the documents, the separate introductions to the several phases of the subject leave something to be desired. They are distinctly helpful, if not indispensable, and although together they present a fairly complete picture, taken individually they are not always as clear as



they might be. In view of what has been done, and what is after all the main purpose of the work, viz., to present the documents in the case, it is perhaps requiring too much to ask for anything more. But the reader cannot fail to voice the wish that somewhere and somehow the editors had found it possible to defend their claim that "after contemplating the wider political and social agitation accompanying the industrial movement, the curve of prices [in the Introduction, previously referred to], is the backbone of American history." Only when the subject is thus studied, in its larger aspects, can the real significance of the documents presented be appreciated.

Volumes VII and VIII of this series are not as satisfactory as the ones preceding. This is undoubtedly due in some measure to the increasing complexity of the subject and to the greater abundance of material. Where selection becomes an important factor, opinions will inevitably differ as to the success which has been achieved by the person responsible for the selection. But there would also seem to be ground for criticism in the present case as to the grasp of the whole subject displayed by the editor. Certainly the student is unable from the contents of these two volumes to obtain the comprehensive view of the entire period which was more or less possible in the previous volumes. The general introduction in the seventh volume is stimulating and full of brilliant suggestion, but fails to fulfil its function in gathering the scattered subjects into a consistent whole.

The period is treated under five divisions: 1. Economic and Social Conditions (general). 2. Owenism and Association. 3. Land Reform. 4. Hours of Labor. 5. Labor Organizations. Each of these subjects is treated in a way that is fairly satisfactory; and it is a genuine pleasure to find an adequate appreciation of the importance of the land question in industrial and political life. The importance of that phase of the social reform of the time which we somewhat carelessly characterize as "communism," is well brought out in the division on Owenism and Association.

In the general introduction there is a statement of the relation of these reforms to the labor movement. But to the mind of the present reviewer this statement is unconvincing, indeed it is almost fanciful, and in spite of a section in each of several

divisions upon the "Relations to other Reforms," the relationship is not clearly established.

It was an era of philanthropy and reform, when every conceivable "ism" had its supporters, and when, as Emerson said, every man went about with a new reform in his pocket. There are many students who think that the labor agitation soon after the War of 1812 was only a part of this wave of philanthropy and reform that swept over the country. Without taking up that specific question, the earlier volumes of this series presented convincing evidence of the beginnings of a genuine labor movement. In reading the present volumes where certain of the reforms are taken up and much made of them, the former doubts return, and one wonders if after all the philanthropic element was the dominant one in the period under consideration. The present reviewer is inclined to think not, and he is only the more regretful that the editor devoted but one-fifth of his pages to the division on Labor Organizations. It was a time when factory operatives, who had been unimportant in earlier labor struggles, became the leaders; when machinery had created positions for women; when a class of unskilled labor appeared, and when the foreign immigrant was taking his place in American industry. In a documentary history of American industrial society these subjects warrant a fuller treatment than has been awarded them, unless adequate reasons are given for allowing other matters to prevent it.

As far as it goes this last division is the most satisfactory part of the present volumes, in that it follows out the line of development of the preceding volumes, and prepares the way for the conditions since the Civil War. For a time it seemed as if coöperation offered the best mode of protection to workingmen, and promised a solution for the labor problem. But it was only for a time, and the revival of business activity in 1853-1854 brought forth a new type of union. The new union avoided all social and political reforms and devoted itself to improving conditions. It was the modern form of union, whose object was to establish a minimum wage, and to maintain it by means of a "closed shop" and which used the "strike" as its weapon.

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*The Basis of Ascendency.* By Edgar Gardner Murphy. New York: Longmans, Green & Co., 1909—pp. xxii, 249.

Dr. Murphy's "Basis of Ascendency" is probably the best philosophical statement of race relations in the South that has been published in recent years. The author, a Southern white man, has met every issue squarely. His interpretation of the various phases of race antipathy are in the main broadly humanitarian. With characteristic earnestness the writer at the very beginning of his preface raises the real question at issue wherever a stronger and a weaker group are living together: "Shall the principles of the state policy, in relation to the weaker racial or social groups, be *repressive* or *constructive*?" Too frequently a bold statement of an issue is but an introduction to a one-sided statement of a case. In this book, however, protest is made both against the extremist who denies the importance of racial characteristics as causes of social cleavage and against the radical who over-emphasizes race differences.

Having defined his attitude toward race qualities, the writer restates the question which must be answered by the North, but especially by the South, thus: "Starting with the fact that the negro is a negro and that his capacities, upon the average, are not the capacities of the white man, what shall be the policy of the state toward such capacities as he has? Shall it be a policy of negation or of development?"

The answer to this vital question, as given in the eleven chapters of this book, may be divided into three parts. Chapters 1 to 4 trace the development of the Southern attitude toward the Negro since the Civil War from a defensive attitude against the injustice of the reconstruction period to the present time, when there is an increasing tendency on the part of the strong to exploit the weak. Chapters 5 to 7 discuss the importance of recognizing the Negro as an essential part of Southern life and show that opportunity and fair play tend to develop race consciousness and self-respect on the part of the colored people. Chapters 8 to 11 first briefly refer to the dangerous reactions which the power to exploit the weak have upon the strong, and then describe at some length the powerful forces which are grad-

ually molding proper public sentiment in the South toward the Negro.

With this general outline in mind a few quotations from the book will serve to show the author's style and bring out some important details which will throw further light upon the value of the work. Under the title "The Indivisible Inheritance" in Chapter I it is maintained that the "Negro and his children have become with us the joint beneficiaries of our civil, educational, and political heritage." Exploitation is not the prevailing attitude. "The suffrage of the blacks has been sharply limited by statute, but the very act of limitation has involved a narrowing of the basis of the whole electorate." In a general sense it is true that there is an "indivisible inheritance" which belongs to both races. As the author states in a later chapter, so intimately are the interests of the two races related that "the fundamental issue is not what we will do with the negro, but what, with the negro as the incident or provocation of our readjustments, we will do with our institutions" (p. 198).

This chapter on the unity of the welfare of the two races is followed by two chapters picturing the revolt of the Southern whites against the domination of ignorance during the reconstruction days. This revolt was a defensive movement of the whites to preserve white supremacy—a supremacy which the author considers at present necessary to the progress of the Negro as well as of the whites. The defensive revolt soon became aggressive. "Its more radical spokesmen have proceeded by easy stages from an indiscriminating attack upon the negro's ballot to a like attack upon his schools, his labor, his life" (p. 29). "The social aversions which were conservative have become increasingly destructive" (p. 27). The author's condemnation of this injustice is both vigorous and convincing. "The fundamental political constitution of a people cannot be perpetually readjusted between meals by devices of application. It cannot be so altered, from instance to instance, as that it may 'hit the negro' in one case and in the next may let the white man off" (p. 31). "If it is hard to convict a white man of the murder of a negro, it soon becomes equally hard to convict him of the murder of a white man" (p. 32).



The chapter on "The Inadequacy of Repression as a Policy of Ultimate Adjustment" opens with a strong description of the "sense of social suffocation" which the intelligent conscientious Southerner feels as he realizes the presence of the large masses of ignorant people of a different race clogging the machinery of the local institutions—the courts, the schools, the legislatures. To the extent that the South with its injustices is thus "like a strong man struggling upward under the consciousness of submergence and suffocation and striking right and left with little thought of either principle or policy" (p. 39), the author appeals for sympathy with it in its obsessions, but in so far as the South would make repression of the Negro a permanent element of Southern government, he is the first to protest that "no modern state, much less a modern democracy, can accept a policy of deliberate repression as defining its permanent and essential relations toward any racial or social group" (p. 46).

The spoken or unspoken reply of the supporters of the policy of repression, thus condemned, is expressed in the questions which are taken up in the next two chapters: "How then shall we control the negro?" "Will not these powers and attractions develop within the race a greater longing for assimilation with the stronger?" (p. 73). To this the answer is that the "fusion of black and white is occurring at the lower rather than at higher levels. The majority of the (negro) leaders are turning to a policy of a self-respecting segregation" (p. 74). "The highest development of the black and white races on American soil need involve no necessary surrender of any legitimate or social 'right' of the weaker nor any necessary invasion of any political or social 'right' of the stronger" (p. 77).

To the progressive Negro he holds out the opportunity of developing and organizing the resources and multitudes of Africa in addition to the leadership of his people in America. "Build your walls if you will," writes the author to those who would limit the chances of the Negro race, "but give to this race also a garden of noble spaces" (p. 107). "The prime force of [race] disintegration is despair. The liberation of the race will mean not its encroachment upon the whites but its self-fulfilment" (p. 108).

The remaining chapters of the book deal with the "fate of the strong," as the author entitles the paragraphs in which he warns the stronger white race against the vices resulting from the constant temptation to exploit a weaker group. "No man, except the peculiarly strong and great, is at his best when habitually dealing with forms of manhood lower than his own" (p. 129). "An abnormal absorption in the issues of race has tended to make real politics in the South impossible to a people who, historically, have always possessed peculiar political efficiency; it has tended to denationalize the most instinctively national of American localities and to dehumanize (in a philosophical sense) a section which has temperamentally represented an element the most humanitarian and the most transcendental in our American experience" (p. 138).

Under the subject of the "Power of Social Reactions" an appeal is made to the North for "that personal and fraternal touch which might slowly dissolve the sharper accentuations of our sectional developments" (p. 144). Both in this chapter and in the next on the "New Coercion" Dr. Murphy describes the forces which impel the South toward the determination that "we [the Southern people] will deal with our problems—tragic and excessive as they are—not merely as a modern people, but in conformity with the modern spirit" (p. 197).

The following quotation from the last chapter, entitled "Ascendency," is expressive of the spirit of this splendid Southern patriot and democrat: "Democracy, as our institutions have interpreted it, does not mean that all men are physically or naturally equal, nor that all men, necessarily, shall be entitled to the ballot. It is wholly consistent with the restriction of suffrage. It declares, however, that such restrictions shall bear no stigma of class and that any fraction of our citizenship, under the provisions of the local State, shall be excluded—if excluded at all—only on the common terms" (p. 235).

With all the excellence of thought and spirit, the book is difficult to read. There is much repetition and a constant use of large words and of abstract expressions. It is unfortunate that such a valuable book, so much needed by the average man, is not written in a style that is intelligible and attractive to the busy



man of affairs. Frequent illustrations by concrete examples would have contributed much to the interest of the general reader. But these faults are comparatively unimportant. The thought that remains with the grateful reader is that Dr. Murphy, a native and citizen of Alabama, has interpreted the race situation with wide breadth of view and has placed the world of thought and of human sympathy under permanent obligation to him.

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*L'Organisation Syndicale des Chefs d'Industrie.* Etude sur les syndicats industriels en Belgique. By G. De Leener. Bruxelles et Leipzig: Misch & Thron, 1909—2 Volumes, pp. xx, 395; xxi, 580.

The author of this work is already well known through his book on industrial syndicates in Belgium, first published in 1902. The present work, however, is a good deal more than a revision of the earlier one, being much larger and more comprehensive in the treatment of the subject. Indeed, it is probably the largest single work in economics yet published by a private author on the subject of combinations.

Mr. De Leener presents a great quantity of facts regarding the extent and character of the industrial combinations in Belgium at the present time and on the basis of these data, supplemented by occasional brief references to conditions in foreign countries, he seeks to describe and analyze the character and effects of industrial combinations as general economic phenomena. The first volume of this work, therefore, is chiefly devoted to a statement of the conditions in Belgium and is entitled, "The Facts." The second volume seeks to organize these facts systematically and is entitled, "The Theory."

The facts are grouped in twelve sections, divided among the leading branches of industry in Belgium, namely, coal, metallurgical, quarry, textile, glass, pottery, chemical, metal products, food, building, clothing, wood, diamond and book. The statement of the facts in regard to these industries covers over 300 pages, largely in small type, and is extensively documented with

extracts from the texts of agreements, etc. In each branch of industry the historical development of the combinations and their present organization are described in varying degrees of detail. On the other hand, there is comparatively little information regarding other business conditions—the companies or concerns affected, their financial position and profits, the movement of prices and of production. It would hardly be expected, of course, that single-handed anyone could master and present data which would require such a detailed commercial and technical knowledge of the several lines of business, even if such data were freely accessible to the investigator. This point may be mentioned, therefore, not with a view to criticizing Mr. De Leener's unusually painstaking analysis of facts, but simply as showing that, before any completely satisfactory basis of facts can be obtained, it is necessary to have very comprehensive investigations, such as a governmental commission or bureau might accomplish, or else detailed monographic studies by competent investigators on the chief combinations.

In nearly every one of the enumerated branches of industry in Belgium there has been some degree of combination, and while for a few of the important products, such as pig iron, linen textiles and raw sugar, there are no syndicates at the present time, yet for others, such as coke, rails, and glass, the syndicates appear to dominate the industry. Some information is given concerning international syndicates in which Belgium participates. In certain of these the producers of the United States are said to be included; e. g., the rail syndicate, the thread trust, and the drawn tube syndicate.

The second and larger volume of the book under review is devoted to a discussion of the causes, character, and effects of industrial combinations, ostensibly on the basis of the facts recited in the first volume. Mr. De Leener makes the express assertion that a satisfactory general theory of combinations may be developed from a study of the conditions in Belgium (Vol. I, pp. 13, 72), but he finds himself compelled, nevertheless, to turn to the United States for data relative to trusts and fusions. This is especially significant in view of the fact that he regards the trust as a highly developed form of industrial combination



toward which pools or syndicates naturally tend (Vol. II, pp. 231 and 232). While American trusts thus receive some consideration, this aspect of the general movement is perhaps not given due weight in a treatise that aims at presenting the general theory, but evidently the other purposes of Mr. De Leener's plan of work made this form of treatment expedient. In this connection it may be noted that the primary purposes of combinations are said to be to secure advantages with respect to the employment of labor, the sale of products or the purchase of materials (Vol. II, p. 285). This hardly covers the ground for fusions or trusts, and the narrowness of this definition of purpose may be ascribed to the restriction of the data to Belgium syndicates.

Mr. De Leener is a pronounced opponent of the view that free competition is a more normal function of economic life than combination; one or the other naturally prevails according to the changing conditions of time, place, and industry. He also asserts that much of the price-making in modern commercial life which is ignorantly assumed to be the resultant of competition is in fact absolutely independent of it. He finds that while crises have been a potent cause for the formation of industrial combinations, yet hard times are not the only circumstances that promote them, and they may arise from various causes during periods of prosperity.

The laws in Belgium are not hostile to industrial combinations and the courts have apparently neither found nor attempted to find therein any means of suppressing them. The attitude of the Government generally has been indulgent, although certain syndicates which were planned seem to have been abandoned on account of threats of parliamentary opposition and eventual modification of protective customs duties.

A considerable part of the second volume is devoted to an analysis of the various forms of organization and the respective merits of the various features as viewed from the standpoint of the combination. In the introductory chapter Mr. De Leener states that his purpose is both theoretical and practical—practical, that is, in the sense that it may furnish a guide to those who wish to form syndicates. The professional economist has

not often attempted to give advice as to the best methods to organize and conduct industrial combinations, but it must be remembered that while such combinations are unlawful in this country, they are quite legal in Belgium. Under such circumstances a manual which gives the approved policies of combination is quite as proper as one on banking or insurance.

The discussion of the effects or consequences of industrial combinations is perhaps the least valuable part of this very useful work, but the author at the beginning expressly disclaims any expectation of describing the effects of combinations in a comprehensive way. There is little beyond generalities, for which the foundation of facts presented in the first volume is perhaps not always adequate. The discussion of prices, even from the theoretical side, is quite unsatisfactory, and more impressive authorities on monopoly prices than Mr. Tarde might have been studied and quoted. The following statement concerning the price policy of the syndicates seems to be misleading to say the least: "En fait, la politique des prix consiste pour les syndicats à faire payer par l'acheteur le prix que celui-ci estime dans son for intérieur être la valeur des produits." (Vol. II, p. 436.) This formula is supported by an excerpt from Tarde's theory of "just price" as exemplified by monopoly prices!

While one may feel quite confident of the accuracy of Mr. De Leener's statements of fact when they relate to Belgian industry, the same cannot be said in regard to his statements concerning other countries. The most striking error noted is the statement that the Sherman Anti-Trust Act was passed in 1901 (Vol. I, p. 55). The date of the formation of the Standard Oil trust is given in two places differently (Vol. I, p. 53 and Vol. II, p. 278). The text of Art. 419 of the French penal code is incorrectly quoted (Vol. II, p. 217). Mr. De Leener's statement that in the United States it is often the custom to draw upon the "magistracy" of the country for its trust organizers and leaders comes as a surprise, but it is possible that he has in mind Messrs. E. H. Gary and W. H. Moore.

Regarding this book as a whole there is no question that it furnishes a large amount of very useful data regarding combinations in Belgium, while there is a great deal in the discussion



of the theory, particularly as relates to the historical and present functions of competition and combination, that is of more than usual merit and value.

FRANCIS WALKER.

Washington, D. C.

*Economics.* A Practical Exposition of the Science of Business with Illustrations from Actual Experience. By Edward Sherwood Meade. (Volume I in the Series "Modern Business".) Chicago and New York: De Bower-Elliott Company, 1909—pp. xxiv, 471.

The time is now past when a new text-book in elementary economics may be said to "supply a long-felt want," so greatly has the output of such books increased during the past ten years. The newer American texts on this subject fall into two groups. To the first group—the smaller of the two—belong the elementary treatises whose authors have endeavored more or less completely to recast the whole body of economic theory in the light of recent doctrinal discussions and of new data. The works of Professor J. B. Clark and Professor Frank A. Fetter are examples of this group, though adhering to the old notion that, to merit the name of science, economics should interpret and explain economic life rather than simply describe it. The second group consists of the texts which show a disposition to reduce the part of theory to a minimum, scarcely sufficient to hold together a mass of descriptive material, of practical information, and of statistical and historical data. Books of the latter sort are well suited to the needs of readers who would object to the strenuous and sustained thinking involved in the study of Mill or Jevons or Cairnes.

Professor Meade's text-book belongs to the second of these groups. While he adheres to the time-honored division of the subject into Production, Exchange and Distribution, and follows the familiar and convenient device of hanging on a fourth division to make room for the treatment of topics that do not fall easily into one of the three main divisions, a very considerable share of the available space is given up, as the title of the book indicates, to descriptive material drawn from modern business experience. This is, of course, largely justified by the somewhat

special purpose for which the book was written. It is the introductory volume in a series of twelve, designed to constitute a complete course of instruction for "men distant from universities or whose daily employment prevents their attendance upon university schools," but who want to train themselves by correspondence for careers as "bankers, public accountants, stock-brokers, insurance agents, journalists, manufacturers, or real estate dealers." The subsequent volumes in the series will deal with such subjects as Corporation Finance, Investment and Speculation, Money and Banking, Advertising, and Commercial Law.

In the main, Professor Meade's book consists of a systematized collection of suggestive facts brought together in a slender framework of economic theory. Indeed, few of the theoretical discussions are furnished by the author, but are drawn mainly from such writers as Mill, Seager, Bullock, Boehm-Bawerk and Gide. Of the 425 pages of which the text proper consists, about one hundred are quotations, generally printed in smaller type than the rest. As one would expect in a treatise by Dr. Meade, the portions dealing with trusts and industrial organizations are probably the best. The book as a whole contributes nothing new either to the method of presenting economics or to our knowledge of the subject. It does, however, contain a considerable number of apt practical illustrations of many economic principles.

C. W. A. VEDITZ.

Washington, D. C.

*Physical and Commercial Geography.* A Study of Certain Controlling Conditions of Commerce. By Herbert Ernest Gregory, Albert Galloway Keller, and Avar Longley Bishop. Boston: Ginn & Company, 1910—pp. 469. \$3.00.

The publication of Gregory, Keller, and Bishop's treatise on Physical and Commercial Geography marks an epoch in the history of economic geography in America. It presents to the public for the first time a serious attempt to put into logical and relatively complete form the ideas which have been gaining a foothold in the educational world concerning the fundamental relationships existing between the economic development and the physical environment of man.



The demand in our schools for the teaching of so-called practical subjects has led to the introduction of "commercial geography" into their curricula. The teaching of the subject has called for the publication of text-books: and a series of these has appeared in the last ten or twelve years, under the various titles of "commercial geography," "economic geography," "industrial geography," etc. There has been confusion and ambiguity, not only in the use of terms but in the methods of treatment as well, arising from the failure to grasp the real significance of the new subject and its relationship to already existing studies. To quote the words of Professor Keasbey:<sup>1</sup> "The most that can be claimed for these commercial geographies is that they are convenient repositories of useful information regarding the products of different countries, the established routes of trade, and the relation existing between imports and exports." They are more or less "useful compendiums of knowledge," and even this limited value depends largely on the frequency of their revision. Even the best of them has had relatively little real educational value, and it has been a misfortune that the new study has gained a foothold in so many of our secondary schools under such unsatisfactory auspices.

There has been a growing feeling that if the new subject is deserving of separate treatment at all, our conception of it must be greatly broadened and our handling of it put on a strictly scientific basis. Its field must be defined and its relation to other branches of learning logically worked out. Its methods must be so altered that the study would no longer be "a mere mnemonic exercise." "There are behind the facts of trade, as behind all facts, certain principles about which they can be grouped, and which serve to lend them life and meaning: and it is interpretation rather than arbitrary memorizing which is of educational importance."

Economic geography, properly conceived, touches, as its name indicates, the fields of two great established sciences—economics and geography. Geography supplies its data and economics gives point and direction to their interpretation. The whole field of

<sup>1</sup> Professor L. M. Keasbey, "The Study of Economic Geography," *Pol. Sci. Q.*, March, 1901.

geography—mathematical, physical, and biogeography, with their subdivisions—is drawn upon for these data, and the selection of materials is governed by the consideration of what light, if any, they can throw on man's economic relations.

Economics had its beginning in the study of "the wealth of nations." It examined the laws which underlie the processes by which men, in groups, procure and increase their store of the goods which they must wrest from the earth in order to live. It concerns itself with man as an active agent working upon and in a natural environment.

Geography is a study of this environment. A knowledge of it and an ability to interpret its data are fundamentally necessary in order that man's actions within it may be really understood. Unless economics is to be a purely abstract science, a sort of intellectual play, starting with a few broad assumptions and deducing its "laws" from them, it needs all the aid which a study of the conditions in which man works can bring. The moment it attempts to become an applied science, starting practical conclusions and guiding practical policies, it finds innumerable points of contact with the facts of man's physical environment.

These facts it is the business of geography to supply; and all economists, from Adam Smith down, have made use of the data thus obtained whenever they have sought to put their "theories" into practical working form. Unfortunately, however, the recognition of this necessary relationship between man's activities and his environment has too often been only partial and inadequate. A cursory examination of existing facts will not often suffice. Broader and deeper and more necessary is an understanding and recognition of the forces which lie back of the facts and the laws of their constant mutation. The enunciation of an economic "law" based only on facts now existing, without recognition that the facts themselves are subject to change, and that the changes, too, are in accord with ascertainable laws, will have but temporary value. The weakness of the old text-books on economic geography lies largely in just this, that they have compiled a mass of data of an economic sort, with scarcely any recognition of the necessity of interpreting the data or formulating the laws which govern them.



Now geography can and does attempt to formulate and interpret the laws which govern the data of man's environment, and the study of economic geography consists in selecting from the whole range of geographical facts and laws those which affect man in his economic activities and throw light upon his economic theories and policies.

It is the demand for some such broader conception of the meaning and usefulness of economic geography which the three Yale professors have sought to meet in their *Physical and Commercial Geography*. They modestly state that they "can scarcely hope to have made more than a beginning." In reality they have done far more. "Well begun is half done," and they have performed the difficult task of breaking new ground, of demonstrating a method, and pioneering a road where none existed. This great service having been rendered, one is not inclined to be too critical of details. Perhaps, after all, such shortcomings as exist may be part of the excellence of a pioneering work—paradoxical as that may seem. The book may, conceivably, prove a more useful guide, if it merely points and illustrates the method and leaves to later writers the task of applying the method to broader fields.

The authors have frankly and modestly applied themselves to but a portion of the field of economic geography, and in that field have disclaimed any attempt to produce an exhaustive treatise. The title of the book itself gives a rough indication of the character of the limitation—"Physical and Commercial Geography. A Study of Certain Controlling Conditions of Commerce." They have not dealt with the whole field of economic activities, but have fixed "attention upon trade." The interpretation of the facts of *commerce* has been the medium through which they have sought to illustrate the interrelationship of man and his environment. On the geographical side their attention has been directed primarily to the physiographic factors of control; yet they have made abundant use of the data of biogeography as well.

The triple authorship is due to a recognition that the new subject requires "contributions from both the natural and the social sciences," and is "best presented by a combination of

workers from these two fields." The *nature* element and the *man* element in all economic activity are both clearly emphasized, and the book is an attempt to analyze and explain the results of their coöperation. Strictly speaking, only the third part of the book is commercial geography. Parts One and Two are introductory and preparatory, the former presenting the data of physical geography (and to some extent of biogeography), and the latter the elements of anthropogeography as related to economic activity. Part Three, using the data of Parts One and Two, seeks to illustrate and explain the natural controls of commerce. The combination is well worked out. It is seldom that a multiple authorship results so happily and gives such evidence of careful balance and mutual adjustment, of painstaking and logical coöperation. Each part shows clear coördination with the others and each succeeds most admirably in keeping before the reader the common object in view.

The heaviest burden has fallen upon the author of Part Three, for here the attempt is made to apply the principles elucidated in the earlier portions of the book. One's estimate of the relative excellence of this part must therefore be made with the mind's eye always upon the especial difficulty of the task. On the whole it is well done, focussing the attention on the relations between environment and activity; yet the author has not been wholly able to dodge the pitfalls of the encyclopedic method. In this respect the work is uneven. The treatment of the cereals, for instance, though necessarily brief, is excellent; but many other products are dismissed with a mere statement of a few unilluminating data. The greatest difficulty is, naturally, with manufactures. Here the relationships between environment and industry are most obscure and demand the closest analysis. Yet, among manufactures of the United States, "iron and steel and their secondary products" are disposed of in a single paragraph of less than two hundred words; textiles (including cotton, wool, flax, hemp, and jute) are given three pages in all; and about fifteen other miscellaneous manufactures are dismissed with the briefest statement of a few facts, covering less than three pages. It is a repetition of the mistake of earlier text-books—a yielding to the desire to give merely "useful information"—and repre-



sents a distinct falling away from the avowed purpose of the authors.

The treatment of the subject by countries is also a little unfortunate. In the introduction the authors seem to admit this and confess that the method is a compromise. One cannot but feel that it would have been wiser and more in harmony with the spirit of the whole work to have illustrated the application of the principles developed in the earlier portions of the book by thoroughgoing discussion, either of the more important materials of commerce, or of the chief economic activities of some one country, rather than to have attempted to combine the two methods.

Nevertheless, in spite of the fact that the third part of the book is more open to adverse criticism than the earlier portions, one must give the author high praise for having dealt with the difficulties of the subject in a more thoroughly scientific spirit than has been evident in any previous American work.

Taken as a whole the book is thoroughly worth while. In addition to other merits, it is attractively written and its material is so interestingly presented that it will appeal to the general reader quite as much as to the student. There are a few typographical errors—atmospheric pressure at sea-level, for instance, is not "14.7 pounds for every square *foot* of surface,"—yet in general it is carefully edited and well printed. These are superficial excellences, but they will serve to add to the wide influence which the book is sure to exert. The authors deserve the gratitude, especially, of every teacher and student of economic geography for having vindicated the claim of this subject to a place in our educational curricula.

LINCOLN HUTCHINSON.

University of California.

*Gold Production and Future Prices.* By Harrison H. Brace.  
New York: The Bankers Publishing Company, 1910—pp.  
viii, 145.

This study begins with a brief history of prices, explained so far as possible by known facts regarding the production of

the precious metals and the growth of trade. From this historical review are judiciously selected those facts and principles which have a bearing on the problem of future prices. Thus, in discussing the fall of prices of 1873-79, the author points out that "there must be increasing supplies of gold in order to overcome the effects of the continued cheapening of commodities brought about by improved processes of production." The production of gold to-day "must advance by leaps and bounds if it is to keep pace with the general improvement of production . . . otherwise prices are likely to decline." With regard to this period also is emphasized the fact that, "owing to the unprecedented production (of the previous period) the stock of gold by this time had become so large that the additions from the mines constituted but a small percentage of it." Such considerations as these tend to raise a doubt whether the recent rise of prices is likely to be of long continuance.

Two of the chapters deal respectively with "Influences which tend to Augment the Effects of Increased Gold Production" and "Counteracting Influences." Despite recent improvements in gold production which have tended to obscure the fact, the industry of gold mining belongs, says the author, to that class in which the law of diminishing returns is most readily recognized. Increasing wealth is an influence which works in different ways with different classes. With those already well to do, it means a larger use of banks and a relative economy in the use of money. But to those just rising out of comparative poverty it means accumulation of money in large enough quantities at least to tide over passing emergencies. Similarly, the opening up of new countries previously undeveloped tends, first, to increase the demand for gold, thus working toward a lowering of prices, and eventually, to increase the use of credit. The drain to the Orient so prominently mentioned by Cairnes and Jevons in an earlier period, is believed still to be important and likely to go far in mitigating any possible further rise of prices.

While hesitant in making any prediction, the author believes that "owing to the increased production of gold, the prices of commodities are likely to have an important advance from their present level. This advance will be broken by minor surface



reactions caused by the alternations of good and bad times and numerous price-making factors. But, in a few years, the exuberance of the advance will be passed; the powerful counter-acting influences will assert themselves; and the advance will halt. In the period which will follow it will be necessary for the production of gold to greatly increase from the present average yearly output in order that the upward movement in prices may again assert itself."

HARRY G. BROWN.

Yale University.

## RECENT LITERATURE.

*Das Seilergewerbe in Deutschland*, eine Darstellung seiner wirtschaftlichen und technischen Entwicklung von der Zunftzeit an bis zur Gegenwart. Von Fritz Troitzsch, Doktor der Staatswissenschaften. Leipzig: Dr. Werner Klinkhardt, 1910—pp. 144. The author of this monograph is the son of a rope manufacturer. He has, therefore, had unusual opportunities of studying the business from the point of view of an insider and of familiarizing himself with its technique. In some respects the development of ropemaking is typical of the development of manufactures in general. In the middle ages and down to the nineteenth century it was a hand trade, regulated under the guild system. With new mechanical processes, new materials, and new uses, especially with the introduction of wire cables, the craft has developed into an industry carried on with costly machinery, considerable division of labor, and large capital.

Quite as interesting as this general trend are some of the facts relating especially to the trade in question. Under the guild system, *e. g.*, there existed a sharp division between the *seiler* and the *reeper*. The former made rope, twine, and minor products in the inland towns; the latter made heavy ropes for sea-going ships. There was not only a difference in the technique, the *seiler* spinning with the left hand, and the *reeper* with the right, but there was also a difference in the method of payment. In the case of the *seiler*, piece wages prevailed. He made the goods and sold them in his shop. The *reeper*, on the other hand, received time wages. This was due to the fact that the customers were often large merchants, who themselves imported the hemp and hired ropemakers to work it up.

*Die deutsche Uhrenindustrie*. Eine Darstellung der technischen Entwicklung und ihrer volkswirtschaftlichen Bedeutung. Von Dr. Paul Dienstag, Kammergerichtsreferendar. Leipzig: Dr. Werner Klinkhardt, 1910—pp. 240. The manufacture of timepieces is treated in this monograph with respect to its technical, its economic, and its social significance. The technical part is a very lucid, although compact, history of the manufacture of



watches and clocks from the early days of the industry in the thirteenth century down to the present time. The economic section traces the growth of the factory system in connection with this important industry, while the social section describes the conditions of living and the organization of labor. The American reader will note with special interest the frequent reference to American inventions and American methods, which have quite transformed the primitive art of the watchmaker into a great industry. The text is supplemented by appendices containing statistics of wages, cost of production, cost of living, etc.

*Transportation in Europe.* By Logan G. McPherson. New York: Henry Holt & Co., 1910—pp. vi, 285. \$1.50 net. The author of this little volume is well known as an authority upon railroad transportation in the United States, and he has recently made a somewhat hasty investigation for the National Waterways Commission of the conditions affecting transportation and traffic in Europe. His formal reports as submitted to that body have been rearranged and, to a large degree, constitute the text of the present book. The major portion of the work is given over to a consideration of the railroads and of railroad problems, both of the continent and of England. A study of land roads and of natural and artificial waterways comprises the rest of the volume. The historical matter which is scattered throughout the book impresses one as being rather incomplete and superficial. The sections dealing with present-day conditions are both interesting and instructive, although, in conformity with the author's recent volume on Railroad Freight Rates, they are at times overloaded with statistical data.

*Genesis.* By B. S. Talmey, M.D. New York: The Practitioners' Publishing Company, 1910—pp. x, 194. \$1.50. If there is any possibility of modifying the modern sex *mores*, an effort should be made to temper the prudery which surrounds the whole matter of sex, and which, in particular, decrees that the young shall remain ignorant where the result of ignorance may easily be a lifelong morbidity or invalidism, for self or others. Hence we welcome a book whose avowed object is the instruction

of children in matters sexual; here is a truly eugenic enterprise. The volume goes into the detail of cell-formation and division somewhat more deeply than seems to us advisable; we doubt if the child in his early teens could follow the processes of mitosis, etc., intelligently. Further, the author, as is so often the case with men who realize that what they are saying will meet with the disapproval of predisposition, becomes at times somewhat self-conscious, and feels it necessary to gush a little over human affections in order to convince his audience that he, too, is like unto themselves. Sensible people need no more than the unvarnished truth and sober statement, while foolish ones can scarcely be induced to be rational by catering a little to their sentimentality. On the whole, however, this manual is to be heartily approved, and its appearance encourages those to whom racial welfare and individual happiness seem capable of being secured in higher degree through the exercise in matters sexual of common sense based upon knowledge of the truth.

*History of American Politics.* By Alexander Johnston, continued by Winthrop More Daniels. New York: Henry Holt & Co., 1910—pp. 445. A persistent demand for this excellent little manual has occasioned another enlargement. Professor Daniels of Princeton has again added a chronicle of ten years, bringing the record of events down to the inauguration of President Taft. The work of the editor leaves little to be desired. The even, impartial tone of the original volume has been maintained. Only here and there the narrative is perhaps a trifle too colorless to give the true perspective. If much is left out which bulks large in our recollection of ten years, the omission is necessitated by the scope of the book, which is primarily political and only incidentally social and economic.

*Antiquities of the Mesa Verde National Park. Spruce-tree House.* By J. W. Fewkes. Pp. viii, 54. 21 plates. This bulletin is of a special nature, descriptive of a cliff-dwelling which once housed about 350 people. It takes up the details of construction, decoration, etc., and describes the various products of the arts found in the ruins. "The picture of culture drawn from what we know of the life at Spruce-tree House is practi-



cally the same as that of a pueblo like Walpi at the time of its discovery by whites, and until about fifty years ago." The bulletin is gotten up in the usual excellent style of the Bureau of Ethnology publications.

*The Choctaw of Bayou Lacombe, St. Tammany Parish, Louisiana.* By David I. Bushnell, Jr. Pp. 37. 22 plates. Bulletin 48, Bureau of American Ethnology. These are the notes taken during four months of last year concerning the few Choctaw still living on the west shore of Lake Pontchartrain. They cover the material and social culture of the tribe, and its myths and legends. The photographs reproduced are very clear and well selected, and the information gathered is of high importance. The occasion has been seized of preserving valuable evidence as to primitive life which would soon have been irretrievably lost.

*First and Last Things: A Confession of Faith and a Rule of Life.* By H. G. Wells. New York and London: Putnam's, 1908—pp. vi, 307. This book contains the beliefs on a multitude of topics of a talented and prolific writer. He treats of metaphysics, of belief, of general conduct, and of "some personal things." It is needless to say that such a volume, though full of interest, scarcely lends itself to review. The reader will find stimulus and pleasure in following the thinking of an active and unconventional mind. After a lifetime of thought and activity, a man has the right to say what he thinks if he cannot give chapter and verse in Kant or Hegel to account for his thought. For he, too, has lived and reacted upon the experiences of life; he has his life philosophy, even though it goes under no established category.

*Comparative Religion: A Survey of its Recent Literature.* By L. H. Jordan. Second Section, 1906-1909—pp. 72. This manual is a continuation of a first edition which appeared in 1906, and is now out of print. It is a survey with comments more or less pertinent, of twenty-five titles, the object being to attain "perspective and vista."

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Vol. XIX. No. 4.

February, 1911

## CONTENTS

	PAGE
EDITORIAL NOTE, - - - - -	337
A NATION IN THE MAKING, - - - - -	339
<i>A. L. Smith</i>	
TAXATION OF CORPORATE FRANCHISES IN MASSACHUSETTS, - - - - -	357
<i>Charles A. Andrews</i>	
THE STATISTICAL WORK OF THE FEDERAL GOVERNMENT—II - - - - -	374
<i>Julius H. Parmelee</i>	
RHINE AND MISSISSIPPI RIVER TERMINALS, - - - - -	392
<i>E. J. Clapp</i>	
THE BRITISH ELECTION ADDRESS, - - - - -	398
<i>George L. Fox</i>	
BOOK REVIEWS, - - - - -	418
<p>Downey's History of Labor Legislation in Iowa; Eaves's History of California Labor Legislation; Ellwood's Sociology and Modern Social Problems; Galloway, Hotchkiss and Mavor's Organization, Correspondence, Transportation; Greendlinger's Accounting Theory and Practice; Lough's Corporation Finance; Liefmann's Kartelle und Trusts; Wright's Wool-growing and the Tariff; Holcombe's Public Ownership of Telephones on the Continent of Europe; Dixon's Traffic History of the Mississippi River System; Commons and Andrews' Documentary History of American Industrial Society, Vol. IX; Morris's Frankpledge System; Botsford's Roman Assemblies; Robinson's Commercial Geography; Ostrogorski's Democracy and the Party System in the United States; Stimson's Popular Law Making; Garner's Introduction to Political Science; Waring's Political Theories of Martin Luther; Brooks's Corruption in American Politics and Life; Hazen's Europe since 1815; Kent's Sermons, Epistles, and Apocalypses of Israel's Prophets.</p>	
RECENT LITERATURE, - - - - -	450

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# THE YALE REVIEW.

FEBRUARY, 1911.

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## EDITORIAL NOTE.

This number of the YALE REVIEW will be the last one issued under the present management. The copyright and good will of the magazine have been transferred to the Yale Publishing Association, which will continue the publication as a general review and issue the first number of the new series next October.

The reasons for making this change at the present time can be briefly stated. The American Economic Association is about to issue the *American Economic Review*, which will cover practically the field hitherto covered by the YALE REVIEW. As this review will be the only one of its kind in the United States officially representing economists as a body, it has seemed right to the editors to merge their interests in the larger movement, as they did in 1896, when the *American Historical Review* was established and history was dropped from the programme of the YALE REVIEW.

While one set of circumstances makes it desirable to give up specialization in one field, other circumstances indicate that there is a need for a medium by which some of the many articles produced in connection with Yale University or by Yale men, and not printed in the technical journals, shall be made accessible to general readers. The new YALE REVIEW will thus, it is hoped, appeal to a wide circle, not only among graduates and friends of Yale, but among educated people generally. Dr. Wilbur L. Cross, professor of English literature in the Sheffield Scientific School, has undertaken the general editorial manage-



ment and will be assisted by a board of associate editors, representing the principal fields of intellectual activity in the university.

In turning over the REVIEW to new hands, the board of editors desire to recall briefly its historical antecedents. The *New Englander* issued its first number in 1843. In 1857, Mr. William L. Kingsley became editor and publisher of the review, and continued to manage it until 1892, when failing health forced him to transfer it to others. The title having been changed from that of *New Englander* to *New Englander and Yale Review*, the new editors decided to use only the second half of the title and to restrict the scope of the review to history and political science.

The first editorial board consisted of Professors George P. Fisher, George B. Adams, Henry W. Farnam, Arthur T. Hadley, and John C. Schwab. In 1896 the historians, Professors Fisher and Adams, withdrew from the board with the surrender of the field of history, and Professor Adams became a member of the board of editors of the *American Historical Review*. At the same time the scope of the review was changed so as to make it a "quarterly journal for the scientific discussion of economic, political, and social questions." A number of changes have occurred in the board from time to time as some members have resigned or died, and others have been added to take their places, but the nineteen volumes now concluded form on the whole a continuous series under one management. For the convenience of those who may desire to refer to the files in the future, the editors are preparing an alphabetical index of the articles and book reviews, which will be issued separately.

During these years we have aimed to maintain a high standard of scholarship. Many topics, many points of view have been represented, but we have striven throughout to accept nothing that did not represent some contribution to the knowledge of mankind. The same spirit animates our successors, and we bespeak for them the support of all those who value and would further the progress of science and letters.

## A NATION IN THE MAKING.

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### CONTENTS.

Influence of the experience of the United States on recent federal constitutions, p. 339; South Africa, a real union, p. 341; amendments to the constitution, p. 343; the senate, p. 343; the lower house, p. 345; relations of the two, p. 346; the judiciary, p. 348; some alarmist anticipations falsified, p. 350; the railway question, p. 351; finance, p. 352; the civil service, p. 353; self government and British sovereignty, p. 354; significance of the recent elections, p. 355.

AMERICANS have the excellent principle of being willing to pay a good price for a good article. Their constitution ought to be a very good article, seeing that the price paid for its peculiarities has included the Civil War and the present state of American politics. They may feel that in 1787, when the compromise was patched up between internecine state jealousies and the necessities of federal union, it was inevitable that there should be left some weak joints in the structure, some rifts within the very newly strung lute. It was the first and the greatest experiment in real federal government, it has been the inspirer and forerunner of those later experiments of Canada and Australia, which again have been so carefully studied by the framers of the Union of South Africa. Politics, Aristotle thought, could, like every art, progress from age to age by practical-improvements effected in detail; and this conscious state-making of 1908-1910 in South Africa, of 1900 in the Commonwealth, of 1867 in the Dominion, is one of the things which bring the ancient world curiously near to us.

In what respects have the Dominion, the Commonwealth, and this new Union each successively discarded institutions which were regarded as not working well in the United States Constitution? In what points has each new federation striven to improve upon its predecessor and with what success? Above all, what points in the new Union of South Africa might be cited as the most interesting to the student of politics and even to the citizen



of a federal state? On what features of this constitution will it be most instructive to fix our attention at this critical date when the first elections to their new parliament have just taken place?

The first question in a federal constitution is, how far does it go? The gamut ranges from mere confederation, the loose league of states which Hamilton so scathingly attacked for its record 1776-1787, to the complete form of federation which Germans call the composite state. This form exhibits a rising scale, from the United States Constitution of 1788 to the Canadian Dominion of 1867, or the Australian Commonwealth of 1901; and finally the South African Union of 1909. The history of the stages leading up to these constitutions suggests that federation is after all only a *pis aller*, a concession to local jealousies, to ignorant impatience of control, to popular limitedness of view. It is true that there may well be conditions in which federation offers the only practicable solution. But even the impracticable became suddenly realised in South Africa, where the movement toward unification burst into a flame so sudden and intense as to startle friends as well as foes. This was the harvest of good that was reaped from the grim fields of civil war. An advocate of federation complained that "the idea of nationality has seized the imagination both of the people and the states." If so, then all the bloodshed and bitterness of the years up to 1902 has not been in vain; out of the eater has come forth meat. Even America's struggle for freedom could not generate the same passion for unity as this; for a struggle, however heroic, against what seemed oppression does not go so deep as a struggle between the dwellers in one land. Brethren who dwell in one house must needs learn to dwell in unity. When three successive conventions over the railway strife had, by February, 1908, brought men to the verge of a war of rates, it was felt that this might soon come to another appeal to arms. So men had felt in the England of the Restoration, and the England of Red and White Roses; anything rather than civil war again.

In America, in Canada, in Australia, the federal constitution was a treaty between suspicious rival states; "State rights" is still a sacred rallying-cry in each case; in fact, we have recently seen it more potent than ever in its appeal to Ohio agriculturists,

or Manitoban Catholics, or Queensland sugar-planters. In the Commonwealth, the states have legislative powers only limited by the rule that these must not clash with the federal legislature on the few subjects where it has special competence. The consequent struggle between state rights and centralization is coming to be a struggle between the older political ideals and the new Labour party with its watchwords of a "white Australia," restrictions on immigration, the eight-hour day, and a fair wage. In the Dominion, the struggle is largely on education and on railways, the central parliament claiming the right to interfere with the provincial parliaments on these matters.

But South Africa is a real union, and more complete than in any British colony except New Zealand and Newfoundland, which are actual unitary states. It is true that the central power is to legislate only "for the peace, order, and good government of South Africa"; but on the question, how much is included in this formula, the central authority is itself the judge. Powers which in Canada belong exclusively to the provincial legislatures are the following:—the alteration of their own constitution, the management of their public lands, the rules for the incorporation of companies, for the solemnisation of marriages, for the administration of justice, for property and civil rights, and the appointment of their own officials. But in South Africa, the provincial councils must wait till these powers are delegated to them by the Union Parliament. So, too, the Australian quarrel over customs revenue, as to the respective central and local shares, is met in South Africa by referring the demarcation of these shares to a commission, and by the proviso that all the states' debts and assets are to be "pooled." Both Canada and Australia have had difficulties from divergent standards of naturalisation in the different provincial divisions; warned by these examples, South Africa has laid down the principle that naturalisation for any province is naturalisation for the whole Union.

Two criticisms which have been made are not mutually contradictory; that the whole scheme is rather lacking in originality, and that the clauses dealing with the provinces are the most original and also the most disputable part. This last comes out in regard to the partition of legislative power. In this the



Union will bear no rival near the throne. The provinces, it is true, have each a council elected in the parliamentary divisions and under the same qualifications for electors and for members, with the same guarantees of freedom of speech and annual sessions, and the same concession of salaries for the members. Their powers embrace, (a) borrowing on loan and raising revenue by direct taxes, (b) agriculture and primary education, (c) institutions and local works, (d) roads, bridges, and markets. But when the list goes on to include all matters earmarked as "local" by the governor-general or delegated by the parliament, when we find their ordinances may be vetoed within a month by the governor-general or "reserved" by him for the consideration of the Crown; when we note that he may reject the rules they set up for their proceedings and that he alone fixes their salaries; when, further, we have each provincial council confronted by a non-party irremovable executive committee under a nominated "administrator" which is to "carry on the administration on behalf of the provincial council," while the administrator fixes the meetings of the council and has to issue all warrants for money, then it becomes clear that a striking attempt has been made to do several bold things; namely, to reduce the provinces to mere municipal independence, to eliminate the mere politician and secure good business men, as in Switzerland, to leave room for such personal influence and even autocracy as was exercised by Presidents Kruger and Brand. On the other hand, seeing that the administrator has to act with the advice of his committee and votes as one of them, that he comes in as a nominee of the central power and may be turned into its mouthpiece against provincial feeling, that the committee might even reduce him to little more than a ceremonial head, it seems quite possible that, as has been suggested, he may come to be in a position like that of the monarch in the British Cabinet of the Hanoverian period, or even disappear like the New Zealand "superintendents."

Perhaps the functions of "suggesting" measures to the central parliament and drawing up reports on private bills will turn out to be the line of greatest promise and greatest usefulness in the activity of these councils.

The history of the United States has taught the world to realise that the crucial point in a federation is the provision for amendment of the constitution. The greatest of all civil wars was an effective but expensive way of accomplishing this object. We do not want to have to explode a ton of dynamite every time we need to shift a piece of furniture. Yet when a federal constitution is set up in the form of a treaty between rival and even jealous states, the treaty is almost sure to be cast in too rigid a mould.

It was so in the case of the Dominion, where the power of amendment rests only with the Imperial British Parliament, and in the case of the Commonwealth, where amendment requires a majority in each house of parliament, a majority in each state and a majority of the constituent states. In South Africa, also, there were principles which had been hotly contested and of which the terms of the settlement were to be jealously guarded; such were the relation of the two languages, Dutch and English; the relation of Natal, intensely British, to the more Dutch states; the relation of the coloured population to the whites; and the relation of urban to rural franchise—the “one vote one value” contest. Any amendment touching these matters is to be “reserved” for final approval by the British Crown. But the actual production of such amendments is by the simple process of a two-thirds majority in a joint sitting of the two houses; a process which in virtue of the relative numbers of the two houses (Senate 40, Assembly 121) is aptly indicated by the Australian “steam-rollering” the Senate; there are even rumours that a similar ironing-out is to be applied in cases of collision in Britain between Commons and Lords.

One indirect advantage there is about the looser “federation” as compared with the closer “legislative union,” that it supplies a natural basis for a second chamber. The United States Senate, thus standing for the principle of equal sovereignty of all the constituent states, has from this and other causes become so preponderant over the lower house that constitution-framers have taken alarm. Thus in Canada such pains were taken to make the Senate not too like the other house and yet not too strong, that it has been made comparatively ineffective. So, too,



in Australia, the Senate has been described as a mere echo of the other house, wholly lacking in independence, and regarded with more contempt than respect. This is attributed to the identity of franchise for elections to both houses, the omission of the American rules as to age and residence and indirect election of senators, the absence of any property qualification, and the fact that each state votes as a single electorate, thus letting in the "Labour ticket."

With these results of an elective senate before their eyes, statesmen have often expressed more admiration of our House of Lords than is perhaps its strict due. Certainly, as Lord Melbourne said of the Order of the Garter, "it has no damned nonsense about merit"; and yet it is, as it has been and, however modified, will continue to be, a noteworthy solution of the second chamber difficulty. If a large element of official reform comes to be introduced into it (ex-ministers, ex-governors, ex-judges, etc.), that would be just what a growing opinion favours for colonial senates.

Besides their experience of the elected senates of United States and Australia, and the nominated senate of Canada, the South African statesmen had to take into account, on the one hand the unpopularity of the Cape Senate from its undue power, and on the other hand the weakness and consequent depreciation of the upper houses in Natal, the Transvaal, and the Free State. The South African Senate is an interesting attempt to profit by all history, and particularly to unite the good of the Canadian and the United States forms. Senators need a property qualification, but not local residence; they sit for ten years, not for life, but do not retire by rotation; an equal number of senators (eight) is assigned to each province, but this "state rights" equality is secured only for ten years and may then be superseded by some less separatist arrangement; these elected senators are indirectly elected by the provincial council and by some representative members of each province, acting on the system of proportional representation by the method of the single transferable vote, as in Tasmania. By the side of the thirty-two elected senators there will be eight senators nominated by the governor-general in council, four of whom must be "well versed

in native affairs." The introduction of the principle of nomination, and the use of proportional representation to secure that the Senate shall be a fair mirror of parties rather than of provincial feeling, ought to make this the most interesting second chamber experiment in the world, unless and until the experiment is tried, of pouring new wine into the old bottle of the British peerage. The point which was till 1909 regarded as an axiom of the British Constitution, the exclusive control of the lower house over money bills, was accepted in South Africa as in Canada; whereas Australia followed the United States practice so far as allowing the Senate to "suggest" amendments. But all provide against "tacking" a separate measure to a money bill to force it through the Senate. A still more axiomatic assumption of political science has been the indispensableness of second chambers. It is rumored that there were found at Cape Town in 1908, as in 1867 at Quebec, some stubborn heretics who would not grant even this axiom; and at the present day there are some who point to the unicameral provincial legislatures in Canada as throwing doubt on the axiom. But then, as Sidney Smith said, there are people who would speak disrespectfully of the equator.

The construction of a lower house raised a number of critical issues: the relation of representative strength to population, the varying franchises already established in the different provinces, the voting rights to be maintained or provided for natives, the "Exeter Hall feeling" in England on the subject of the coloured population. This last was expressed in Mr. Keir Hardie's epigrammatic and therefore half-false summary of the bill as one "to unify the white races, to disfranchise the coloured races, and not to promote union between the races in South Africa." But in fact it was clearly stated by the home government that the Crown assent would never be given to a disfranchising bill. So the franchise has been left just as it now stands in each colony; the future Parliament can deal with it, but only by a two-thirds majority. As to population, while an arbitrary number of representatives has for the present been allotted to each colony (Cape 51, Transvaal 36, Natal 17, Orange Free State 17), so that a Natal member sits for some 2,000 voters,



a Transvaal member for over 4,000, yet it is provided that in the near future representation shall be on the basis of population disregarding provincial boundaries, one member to every 2,000 to 3,000 adult whites. This will remove one powerful agency of provincial separatism. The single-member divisions were to have been four times as large, with the idea of introducing proportional representation in elections for the Assembly, as for the Senate. But this idea had to be sacrificed to the paramount necessity of a *quid pro quo* to the Dutch to secure the principle of "equal rights," i. e., equal voting power as between rural and urban districts, Dutch and English. It was just on this ground that the war itself had been fought; it may now be regarded as settled for ever. Such a result was worth the price, though we must regret the sacrifice of proportional representation, which would have worked powerfully to break down the lines between Dutch and English, between farmers and townsmen, and would have obviated the paralysis now inflicted on a British minority in the country districts and on a Dutch minority in the towns.

That all pollings take place on one and the same day disposes of our British anomaly, plural voting; that the elector's choice is not restricted to local residence, meets an anomaly of the United States Constitution.

Difficulties have arisen in the United States and in the Commonwealth as to the relative powers of the two houses. Now it has always been held by publicists, and the events of the last twelve months in Great Britain have made it as clear as can be made even by a *reductio ad absurdum*, that the proper working of cabinet government requires that the responsibility shall be to one house, and this one house shall be the popular house. The other house may be invaluable as a chamber of revision, of suspension, of amendment, but cannot claim to be as directly representative as the Assembly. It must, therefore, in a well-constructed cabinet system, be incapacitated from making such a claim, just as, whatever other issues come from the present British struggle between the two houses, there must be an end put once for all to the indeterminateness which allows a raid of "backwoodsmen Peers" to pose as more truly "representing"

the people than the people's own elected representatives. In the United States, however, and in Australia, the Senate can hardly be said to be less representative than the other house, and the relative position of the two houses seems almost to be designed for collision or even conflict. From such conflict South Africa is guarded even more than Canada was; it is guarded by the facts that the Senate is only partially an elected body, and even then the method of election is indirect and not in the ordinary sense "popular"; that the Senate is to be "steam-rolled" by a joint sitting of the two houses in the next session after a deadlock arises or in the case of money bills, in the same session; above all, that South African opinion seems to take little stock in the second chamber principle. The Cape had found its elected Senate too strong; in the other three it had proved too weak. It was like the sergeant's disgust at the soldier who was being flogged: "hit high, or hit low, there's no pleasing you." Either way, the principle was under a cloud. It was even proposed that all deadlocks should be smoothed out thus in one and the same session. It is curious to notice constitution-makers in 1909, as in 1867 and in 1789, almost morbidly afraid of the predominance of an upper house, and but little conscious of the real danger of its sinking into inefficiency. A chamber of revision, of private bill legislation, of committee work, of full-dress oratory, "a place where ministers may make graceful concessions which they have refused elsewhere," a place of gilded retirement, may be all very well in its way, but it is not real bicameral legislation. This may, however, be the general destiny of second chambers under democracy. We must not be misled by the recent outburst of the House of Lords; "this rash fierce blaze of riot cannot last"; indeed, the cold fit seems already to be following. In one respect it has been realised that what is wanted is protection for the upper house rather than against it; accordingly, the South African government may dissolve the lower house without dissolving both. This seems halfway between the Canadian life-senators and the Australian and American short-term senators. It is at any rate a most potent *argumentum ad hominem* given to the executive over insubordinate representatives.



It is becoming evident in modern states that, with the increasing approximation of economic conditions and politics, more and more importance comes to attach to the judiciary. In England, for the last forty years, Parliament has handed over to the judges its jurisdiction over corruption at elections. The decision in the Osborne case is proving to be a turning-point in the history of organised labour and perhaps in the whole party system. In the United States the trust magnates are proving themselves wise in their generation by realising that the law court rather than the legislature is the arena in which their battle is to be fought.

The growing complexity of social conditions, the magnitude of the interests involved, make it certain that the questions brought up before the judges will grow both in numbers and in weight. The sound working of a constitution will, therefore, depend very much on the degree to which it secures that the judiciary shall be on the one hand independent of political pressure and popularly recognized as thus independent, and yet on the other hand responsive to the real changes which slowly come about in a community's ideals. We must have our judges neither "crooks" nor "fossils." In this light there is significance about certain differences in the constitutional rules of the different South African states. In Great Britain judges are removable only on an address of the two houses of Parliament to the Crown. Natal had followed this wording. The Transvaal, like Australia, added "for proved misbehaviour or incapacity." The new constitution omits the word "proved." It is interesting to see the science of politics thus making use of experience in a practical detail. Writers on politics have in the past talked glibly enough of practice and of experience, but what was the good of practice summed up into generalisations as broad as axioms of geometry or experience gathered from the far fields of Greece and Rome? But the new Supreme Court will differ from that of the United States in marked respects. It need not always sit at Bloemfontein, and this relaxation may be used to get over some of the inconveniences of having had to divide the honours and make Cape Town the legislative capital, Pretoria the administrative, Bloemfontein the judicial. It

differs again by having an outside appellate body, the Privy Council. But cases can only be appealed when the Privy Council gives leave, and the South African Parliament can limit these cases. Here again something was learned from the Australian Commonwealth debates over the conflicting claims of the colonists for legal self-competence and the Empire's interest in legal uniformity. It is the interest of all lawyers to have the greatest possible strength and finality in the ultimate appeal tribunal, and it may be said, contrary to some vulgar prejudices, that the interest of lawyers is in the long run the interest of the community.

A third difference from the United States is again a point on which Australian experience was instructive. The greatest function of a supreme court is the interpretation of the constitution, and it was this which Australian sentiment was so reluctant to send up to Westminster for its arbitrament. But South Africa, not being a federation, has not a constitution in this rigid sense, but has a parliament which is like the British, "omnipotent," "can do everything except make a man of a woman," though some would say the British Parliament is now being asked by the women's suffrage societies to do that. The larger question remains, which is the better, a flexible constitution which seems to be at the mercy of a legislative body, or a rigid constitution which seems to be only capable of alteration by civil war? In England the present budget and the attack on the House of Lords appear to some alarmists to show the dangers of the flexible constitution; in the United States, Mr. Roosevelt at any rate seems to find that rigidity needs some judicious bending, as Abraham Lincoln did before him.

The general aspect of things in South Africa is that political issues will be frankly fought out on political grounds. It is well that this should be so, for in spite of all that has been written deprecating "party spirit," what is needed in politics is not less of this spirit but its crystallisation about more solid objects. On the great issues of life, social, economic, moral, or religious questions, men must differ and ought to differ, and such differences ought to be regarded as decisive lines of cleavage. For what is the alternative? That the struggle, if it is not to be by



the arbitrament of arms, should be transferred to the law courts. Now English history in the seventeenth century taught men once for all what is the result of treating ultimate issues as if they could be decided by mere precedent and legal reasoning. To shuffle off political decisions by throwing them down before the law courts, is both shortsighted and in the long run suicidal. For what does it lead to? The temper expressed by a Labour M.P. the other day, declaring they were "sick of this hypocritical reference to His Majesty's Judges"; these judges, he said, represented one class and always decided in one direction. Is it not the case that under both the States' Constitution and the Dominion Constitution, this undue strain is thrown on the law courts? "Without the Privy Council as ultimate referee," said a Canadian, speaking of the religionists' duel over the Manitoba schools, "our two races would be at each other's throats." Thus we may see in the South African elections, now just concluded, neither an unnatural nor even an unwholesome degree of party spirit. Like the war, it is a knockdown fight; but once over, the defeated may accept the results and each respect the other. Indeed, war itself inculcates this spirit; it makes a reality of the phrase "our friends the enemy."

In politics, actual facts have a disconcerting habit of stultifying the prophets. Already some alarmist anticipations expressed a year ago have been falsified. It has not been the case that developing a federal movement into completer unification has been an undue forcing of the pace; nor that settling it without an explicit popular referendum has been resented; nor that the Dutch were only waiting this chance to take their revenge for the war; nor that the rights of the natives were being sacrificed. On the contrary, it has been remarkable how rapidly the bolder conception justified itself against the more timid federationists, e.g., in Natal. It is probable that a union which has already won to itself the people's hearts, would, if put to the ordeal of a popular vote eighteen months ago, have had as narrow an escape from defeat as Hamilton's constitution in 1789. As to Dutch feeling, "Hertzogism," or the passionate retention of the Dutch language, is a natural sentiment, but English may be safely trusted to become the language of the new nation in due time,

for to add Dutch and English in the schools to the Taal at home is to attempt to make children trilingual. So, too, the rights of natives may be safely trusted to the provisions that a two-thirds majority of the new Parliament is required to pass any bill affecting the natives, and that the bill is reserved a year for the assent of the Crown. Americans will watch with sympathy the difficulties of a governing white population of some 1,100,000 confronted with over 4,000,000 natives. Americans, too, will note with interest that the administration of native territories is committed to a permanent commission under the prime minister, but appointed by the governor and independent of Parliament; this is an attempt to avoid both the abuses of the United States Red Indian history, and the Australian experience of the friction consequent on an attempt to make native administration quite independent of the government. There are strict rules, also, against the sale of intoxicants to the natives, and against alienation of land by them, and against whites settling in the vast native "reserves." The future incorporation of Rhodesia, etc., is also provided for.

Another difficulty has been, and will be, the railways. Three conventions had been held to settle this subject, with only the result that in February, 1908, it was declared that "a war of rates is inevitable and this will certainly mean bankruptcy and probably lead to open war." Indeed, it was the report of January, 1907, on this railway deadlock that set the ball rolling which developed into the federal movement. Railways must always be a weighty matter for constitution-makers to consider. Even in older states, their legal and political position comes more and more into debate. At this moment (September, 1910) in England there is on one side a powerful movement toward state ownership of the railways, and on the other a strong party among railway employees urging free use of a general strike as their normal weapon. In Canada the railways have defied the state's orders to build viaducts. In continental Europe the most ominous thing since the execution of Ferrer has been the French railway strike of October, 1910.

In Australia, it is said that lines were built to pay politicians, not shareholders, and it is evident that railway men under



a Labour government can hold a community almost at their mercy for a time. How then has South Africa dealt with this crucial subject? In the first place, the very apple of discord, the sum of railway profits, has been utilised as a political persuasive; the Transvaal conceded to the Cape 20 instead of 12 per cent. of the future traffic, and to Natal 30 per cent. for 24. Then the Australian dear-bought experience has been followed, and the railway administration is handed over to an independent commission, to be conducted on business principles, tempered by "regard to agricultural and industrial development and population." No more railway construction scandals, no more crushing rates levied by coast on inland towns; "it is the Magna Charta of the interior." Next, railway earnings are to be earmarked for railway use and not to be turned into the coffers of the government, as is done with state railways in Prussia, and the post office in all countries.

In the United States it almost seems in some districts to be coming to an open struggle between the federal power and the jobbery, tyranny and fraudulency of the great transport companies.

There is always tension in a federation on the question what revenue is to be allocated to the central power and what to local. The United States finance bears witness to this. In Australia there has already been strife over the shares of customs revenue to be thus allocated. Canada has tried to get over it by defining that the central power is to take the proceeds of indirect taxation; the provinces, of direct taxation. But fiscal writers agree that it is becoming increasingly difficult to maintain this distinction as really logical or practicable; not to mention that direct taxation is unpopular and local governments too timid to impose it. The Durban convention (1908-09) found the subject so inflammatory that it has been discreetly referred to a committee to draft proposals for a settlement by Parliament. If that permanent settlement follows the lines of the interim settlement already at work, it will make the new constitution unique in its control by the central power, the governor in council, over the provinces who are responsible to it for their expenditure and have to submit their estimates to it. It takes over their debts and their property, and

from its treasury makes the grants to them. All this is a very interesting attempt to remove one of the chief causes of internal friction in such constitutions.

Perhaps under the head of financial improvements may be put the total repudiation of any "spoils" system, despite the fact that Dutch traditions regard such a system as quite natural and a proper reward for the trouble of taking part in politics. Even Canada has succeeded in freeing about one-half of its official appointments from the pestilent sophism of "the spoils to the victors." But in South Africa the civil service is made a permanent body. That this is a great thing to have accomplished there, is amusingly illustrated by the recent naked and unashamed effort of Transvaal legislators to vote to themselves a full session's salary on a few weeks' attendance. It is probable that morality is going to have quite a lively time before it makes good a place for itself in South African politics, though to have got a good start, as it has, is even better than to be armed with a "big stick" as a means of inoculating ethical principles into veteran politicians.

The nearest constitution in point of time is that of the Commonwealth of Australia. Some critics have found the results of this disappointing. But we must admit that it has tended to dignify politics by introducing such broad issues as consolidation of the different state debts, conditions to be imposed on immigration, the necessity of naval and military organization, an eight-hour day and fair wage for labour, public ownership of railways, protection against trusts. No doubt other influences have coöperated, for instance the Japanese victory over Russia. For in the Southern ocean, as in the Pacific, Japan has carried on her mission of scaring older civilisations into some conscience in regard to a nation's primary duty, self-defence. It is all to the good for world-peace that Australians, like Americans, should remember that Eden was guarded by a sword. "A white Australia" is a natural ambition, but it postulates a solid contribution to the navy and compulsory military training. Similarly in South Africa, coincident with the determination to exclude Chinese and Indians, we see General Botha proposing to organise his new nation in arms by the help of his "old friend Lord



Kitchener." If Africa for the Afrianders includes this, well and good. But there is a great danger of new-settled countries closing themselves to immigration. They will not submit, they say, to be dumping-grounds for the pauper labour of Europe. On the other hand, Australia, with her slow growth of population, her aggregation into great cities, her jealous labour policy, cannot be said to be in a satisfactory position. The best hope of her awaking to the responsibilities and perils of a vast and scantily populated continent lies in the awakening effect of new nationhood. The elevating influence of this conception has already shown itself in South Africa. Botha, defeated by Sir Percy Fitzpatrick at the polls in Pretoria (September, 1910), appeals to his compatriots not to let this be an excuse for revival of racial animosities. Hertzog, if he does insist on English children learning Dutch, at any rate assigns educational grounds for the rule.

It will probably seem to an American observer that there will be a lion in the path of the new constitution. How is real self-government in South Africa compatible with the ultimate sovereignty exercised by Great Britain? But it is unlikely that this will be a real practical danger. After all, even Englishmen can sometimes be made to learn their lessons, and the teaching of the years between the battle of Lexington and the surrender at Yorktown has tended till lately to excess rather than defect of the let-alone principle in the management of colonies. It was evident from the debates in the British Parliament that there is a great desire to give the new experiment full scope. There is perhaps the chance of too little rather than too much control or interference by the home government, as is shown by the recent history of the imperial tie in Canada and in Australia.

In the interval between the union of the Dominion in Canada and the union of the Commonwealth in Australia, it was often asked whether these federal unions would prove a step toward imperial federation or a substitute for it. The latter seemed perhaps the likeliest at that time, but not now. This most recent federal union has itself to a large extent been the product of the imperial idea. The Boer ex-generals were themselves proud to

form part of the British Empire. No one can mistake the rapid growth of a similar sentiment in Canada and now even in Australia. If a practical and stable federation of the British Empire does come about, it will be the greatest achievement in history, transcending even the establishment of the *pax Romana* under the Cæsars. For it will be the achievement of that which is the greatest problem of political science, a federal union strong yet elastic, natural in growth yet a product of conscious art. And it will be a step toward that great aim of a general world-peace which is to be won, not by sheathing the sword, but by showing a front too strongly armed and too ready for action to make aggression possible. This presupposes a similar development of naval and military strength for defensive purposes on the part of the United States of America, and a similar concentration on the ideal of peace. Does this appear so much of a dream as it would have appeared even a few years ago? Already the United States' conscience finds itself called upon to act policeman over the bear-garden of the Central American states. Some day the same government will have to assume an arbitral function in South America. For the Monroe doctrine cannot confine itself to a negative principle; those who say "hands off" cannot forever refuse to touch the burden with a finger themselves. The Panama canal already gives promise of being no way inferior to the Suez canal as a creator of new international responsibilities.

Some sidelights are thrown on the prospects of the new Union by the elections just completed. The Parliament of 121 is made up of seventy-one "Nationalists," including with them the four Labour members, thirty-seven "Unionists," and thirteen "Independents" from Natal. This means that Botha's government will have that valuable corrective, a strong opposition, the fifty under Jameson. Indeed, on a proportional representation, the Unionists would have won many more seats. The result, however, will not mean a domination of Dutch over British. Rather, the elections have been "a protest in favour of the non-partisan government by all the best men" which Botha at first attempted to secure. On such fundamental issues as land, immigration, and education, he stands much nearer to Jameson than to his



own extremists, Hertzog and Fischer, and it was Hertzogism which lost him so many seats and a still greater proportion of votes. It is encouraging to hear that "every Unionist candidate was successful who combined brains with democratic sentiments." New lines of cleavage, therefore, are evidently superseding mere racialism; this is what appears to some of the hotter partisans as meaning that "there is no more difference between the two parties than between Tweedledum and Tweedledee." What is it that has in so short a time obliterated the deep dividing lines of the war, or at least pushed them into the background? Nothing less could have done it than the intense spirit generated by the new union, the glowing consciousness of a new era, a new nation come to the birth. There is not even what was feared would constitute the differentia of parties, the sharp distinction of urban against rural interests. Nor are the mining magnates at all over-represented, rather the reverse, and they are found about equally on either side of the new house. Nor again is it an arraying of social classes against each other, but an intermingling of farmers, lawyers, mine-owners, traders, labour men, and experienced administrators. Not even the traditional isolation of Natal is to continue; they had talked of holding the balance, like the Irish members in the British Parliament, but the government will have a clear majority of thirteen over all the rest combined, while it can also count on Jameson's expressed desire to "help it to coerce" its own backveldt and Orange State division. It will need all possible strength. The problems before it are critical.

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## TAXATION OF CORPORATE FRANCHISES IN MASSACHUSETTS.

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### CONTENTS.

General Theory of the Franchise Tax Law, p. 357; Provisions of the Constitution as to Taxation, p. 358; Taxation of "Intangible Personality," p. 358; Constitutionality of the Law; upheld as being an "Excise Tax," p. 361; Taxation of Foreign Corporations, p. 363; Amendments of 1903, p. 365; Amount of revenue produced, p. 368; Distribution of the Tax, p. 368; Application of the Statute, with examples, p. 368.

BY legislation passed in 1864 and 1865, Massachusetts established a system for the taxation of corporations which was then new to this country. This system, with some changes, has continued in force without interruption and has been rightly regarded as Massachusetts' distinctive contribution to the practice of taxation in the United States. By this system all corporations organized with capital stock under the general or special laws of the State for the purpose of profit in manufacturing or mercantile business, or of conducting a trust company, or the insurance business, and all corporations, wherever organized and operating in Massachusetts, in the business of railroads, street railways, gas and electric light or power companies, and water companies,<sup>1</sup> are taxed by the Commonwealth upon their "corporate excess." This "corporate excess" is the margin of value residing in the shares of stock of each corporation respectively, after deducting therefrom the value of the property of the corporation taxed by the municipalities where such property is situated. There are variations in the application of this general rule to specific kinds of corporations, but in general the underlying principle of the system is as herein stated. This method of taxation

<sup>1</sup> Not all of these classes of corporations were included within the original acts, but the general method has from time to time been applied. See Acts of 1864, Chap. 208; Acts of 1865, Chap. 283; Acts of 1885, Chap. 238; Acts of 1886, Chap. 270; Acts of 1888, Chap. 413; Acts of 1898, Chaps. 417 and 578.



does not apply to savings banks and mutual insurance companies. For these classes of corporations other forms of taxation by the Commonwealth have been devised.

Since colonial times Massachusetts has been wedded to the so-called general property tax. The only provision of the Constitution relating to taxation states that the legislature shall have power "To impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and persons resident, and estates lying within the said Commonwealth; and also to impose and levy reasonable duties and excises upon any produce, goods, wares, merchandise, and commodities, whatsoever, brought into, produced, manufactured, or being within the same." In the first of these two provisions proportional and reasonable taxation of property is authorized. The laws<sup>2</sup> of the Commonwealth now and for many years upon the books provide that "all property real and personal situated within the commonwealth, and all personal property of the inhabitants of the commonwealth wherever situated, unless expressly exempted by law, shall be subject to taxation." Real property is, for the purpose of taxation, land and "buildings or other things erected on or affixed to the same." The principal items of personal property enumerated as being subject to taxation are:

1. Goods, chattels, money, and effects.
2. Money at interest and other debts due the person in excess of that for which he is indebted or pays interest.
3. Public stocks and securities, bonds of railroads and street railways, and stocks in moneyed corporations.
4. The income from an annuity and the excess above two thousand dollars of the annual income from a profession, trade or employment.

With the exemption statutes which affect in some degree all or nearly all of these classes of property we are not now concerned.

The chief difficulty in the equitable enforcement of the general property tax arises from the impossibility of discovering and assessing fairly that class of property commonly called "intangible personalty,"—money, net credits, and securities. Previous

<sup>2</sup> Acts of 1909, Chap. 490, Part I, Secs. 2, 3 and 4.

to 1864 some 350 boards of assessors, holding office in as many municipalities, were attempting to assess the inhabitants of their towns upon this intangible personalty owned by them. As is always the case, this attempt met at best with indifferent success. Such property is easily concealed; the large majority of citizens failed to make the returns required by law, and the system of doomage, amply provided by statute, administered by so many independent boards of assessors seldom secured the equitable results which it was intended to produce. It was not uncommon that shares of a given corporation would be assessed at \$500 in one town, \$100 in another town, and at \$50 in still another. Clearly, not more than one of these valuations could be correct. It was probably true, moreover, that only a small part of the shares of the corporation were assessed at all, since no list of stockholders was made public.

There has always existed in Massachusetts a healthy sentiment for the enforcement of law, and for such changes in unenforceable laws as will make them more perfect instruments to accomplish their evident intent. We may well believe that this sentiment allied itself with the conviction existing at the close of the Civil War that the revenue system of Massachusetts was in need of repair and amplification. Be that as it may, in 1864 and 1865 laws were enacted which provided that the Tax Commissioner of the Commonwealth should determine the fair cash value of the outstanding shares of every Massachusetts corporation. This value of all the outstanding shares is called "the value of the corporate franchise." From this value the Commissioner deducts the value of the real estate and fixed machinery upon which the corporation is required to pay local taxes to the towns where such property is situated. For this purpose local boards of assessors are required to report to the Commissioner the values at which this property has been assessed by them. The Commissioner is to adopt such local valuation as his valuation for deduction, unless he believes it to be excessive. In this case he can deduct a less amount and can require the corporation to prosecute an appeal from the valuation of the local board.

The value remaining after this deduction from the "corporate franchise" is "the value of the corporate excess." Upon such



value the Tax Commissioner assesses a tax at an average rate.<sup>3</sup> The corporation is required to pay this tax to the Commonwealth. The law provides that the corporation shall submit to the Commissioner a list of its stockholders, with their residences and the number of shares owned by each. So much of the tax as is paid on account of shares owned by nonresidents of Massachusetts is retained by the Commonwealth for her own uses; the remainder is distributed to cities and towns of Massachusetts where the stockholders reside, in proportion to the number of shares owned by such residents, except that in the case of street railway companies,<sup>4</sup> distribution is on the basis of the location of tracks, and except, further, that in the case of manufacturing and mercantile corporations,<sup>5</sup> distribution is made on the basis of the location of the property of the corporations. The shares of stock are nontaxable in the hands of the owner, the law makes ample provision for its own enforcement, and the Tax Commissioner is given full power to secure from the corporation all information necessary to him in his assessment and computation of the tax.

By this legislation all the shares of Massachusetts corporations became at once taxable and they were actually taxed at a uniform rate, if there was in them any value in excess of the value of the real estate and machinery of the corporation. The perplexity of the local boards of assessors, so far as it related to the taxation of these shares, was removed, the revenues of the cities and towns were increased, and the Commonwealth herself secured a substantial income from the tax on shares owned by nonresidents of Massachusetts. The corporations thus found themselves called

<sup>3</sup> See Acts of 1909, Chap. 490, Part III, Sec. 43:

"Every corporation subject to the provisions of section forty shall annually pay a tax upon its corporate franchise, after making the deductions provided for in section forty-one, at a rate equal to the average of the annual rates for three years preceding that in which such assessment is laid, the annual rate to be determined by an apportionment of the whole amount of money to be raised by taxation upon property in the commonwealth during the same year . . . after deducting therefrom the amount of tax assessed upon polls for the preceding year," etc.

At first the rate was the annual rate; later, in order that fluctuations might not be too disturbing, the average of three annual rates was adopted.

<sup>4</sup> Acts of 1909, Chap. 490, Part III, Sec. 64.

<sup>5</sup> Acts of 1910, Chap. 456.

upon to pay out of their treasuries moneys which theretofore they could have distributed as dividends. Without delay the law was attacked as unconstitutional. The decision<sup>6</sup> of the Supreme Judicial Court, handed down by Mr. Chief Justice Bigelow, upheld the law. This decision stands as a classic in the literature of taxation in Massachusetts. Later decisions have defined and clarified details of the statute and its amendments of later years, but no subsequent decision has added anything in the way of stating the underlying principles.

In the very first paragraph of its decision the court said:

It is too clear to admit of discussion that, according to recent adjudications of this court, the assessment which is the subject of controversy in these actions must be supported, if sustained at all, as an exercise by the legislature of the authority conferred by that clause in the constitution which gives the power of imposing reasonable duties and excises upon any "commodities" within the Commonwealth; in other words, it cannot be held valid, unless it can be construed to be in the nature of an excise on the franchise of the corporations designated in the statute, and not a tax on the property belonging to them. The decisive reason why it cannot be supported as a tax on property, in the sense in which that phrase is used in the constitution in the article cited, is, that it is not "proportional"; that is, it is not laid according to any rule of proportion whatever, but is imposed only on the corporations designated in the act, without any reference to the amount required to be raised by taxation for public purposes, or to the actual property held by such corporation subject to taxation, or to the whole amount of property in the Commonwealth liable to be assessed for the public service.

The only question then is, whether there is anything in the nature of the assessment in question, or in the manner in which it is imposed, or in the method prescribed for ascertaining the amount which each corporation is to pay, which renders the act under which it is imposed invalid and unconstitutional, as authorizing an excise or duty on the franchise or privilege of corporations.

This opening paragraph eliminated the possibility of sustaining the law as imposing a property tax. But the court continued:

If the legislature had intended to impose a tax on the property of corporations, exclusive of their real estate, it would have been easy to ascertain the exact amount liable to such assessment, by requiring returns setting forth the nature and value of all the personal estate of which each was possessed. There would have been no doubt that a tax imposed on the amount so ascertained would have been a pure property tax. But they adopted a very

<sup>6</sup> Commonwealth vs. Hamilton Manufacturing Co., 12 Allen, 298.



different rule or standard of taxation. The market value of the shares of a corporation, or the aggregate market value of all the shares, by which we understand the cash price for which the shares will sell in the market, does not necessarily indicate the actual value or amount of property which a corporation may own. The price for which all the shares would sell may greatly exceed the aggregate of the corporate property, or it may fall very far short of it. Undoubtedly the amount of property belonging to a corporation is one of the considerations which enters into the market value of its shares; but such market value also embraces other essential elements. It is not made up solely by the valuation or estimate which may be put on the corporate property, but it also includes the profits and gains which have attended its operations, the prospect of its future success, the nature and extent of its corporate rights and privileges, and the skill and ability with which its business is managed. In other words, it is the estimate put on the potentiality of a corporation, on its capacity to avail itself profitably of its franchise, and on the mode in which it uses its privileges as a corporate body, which materially influences and often controls its market value.

To make its meaning doubly plain the court said further:

As has been already said, the estimate put on the shares of a corporation and constituting this market value may and often does include the property of the corporation as one of the elements on which it is based; but such value does not represent such corporate property, pure and simple, reckoned at its actual value as a present interest belonging to the corporation, but rather a right or interest in the property held by the corporation in combination with the corporate franchise and privileges and constituting a part thereof, and in the profits and future earnings which may result from the use of the property in the corporate business. That this was the theory on which the statute was founded is made manifest from the fact that the tax is not based on the capital stock paid in, nor yet on the par value of the shares, but on the aggregate value of the shares ascertained by the price paid in the market for the shares when sold as the separate property of the stockholders. It is from the amount so ascertained that the value of the real estate and machinery is to be deducted in order to determine the sum on which the assessment is to be laid. The tax is therefore laid, not on capital stock as signifying the money paid in to carry on the business of the corporation or the property purchased therewith and owned by the corporation, but on capital stock representing the aggregate of the market value of the shares. The price for which shares are sold does not depend on the value or amount of property belonging to a corporation, but rather on the capacity of the corporation to use its property in connection with its corporate powers and privileges advantageously and profitably, and upon the present prosperity, prospective earnings and probable final results of the corporate business. It would seem to follow from these views that the valuation which the public put on the stock of a corporation, as shown by sales and purchases of the shares, cannot be justly regarded as a valuation of the property of the corporation; nor can it be so considered in the assessment authorized by section 5 of the statute. It is the capital stock considered as a franchise, embracing the whole corporate organization, with all its rights and privi-

leges of which the shares are constituent fractional parts, that forms the subject matter on which the tax or assessment is imposed. Nor are we able to see any reason why the aggregate market value of all the shares of a corporation, representing as it does the estimate put, not merely on the property of the corporation, but also on the rights, privileges, capacities and present and prospective results of the corporate organization and business—in other words, on its franchise—is not a legitimate and just method of arriving at a basis on which to calculate an excise or tax.

And then, after further discussion not pertinent to our present inquiry, the court expressed its conclusion as follows:

The result, then, to which we have come on this part of the case is, that the tax in question was intended to be and is an excise on the franchise of corporations, and not on their property; that the imposition of it was a lawful exercise of legislative power under the constitution, and that the mode of measuring the value of the franchise by the market value of the whole stock, allowing the element of deduction as equitable in its general effect, is just, reasonable and valid.

This decision of the court makes it clear that the legislature of Massachusetts had exempted from taxation large amounts of personalty, the taxation of which, theretofore, had been founded upon the constitutional provision relating to the proportional and reasonable taxation of persons and estates. And furthermore, the legislature had established a new form of excise upon a "commodity" not before taxed—the commodity or privilege of corporate existence.

This system of excise taxation continued without material change until 1903, applying to constantly increasing numbers of corporations engaged in manufacturing and mercantile business or carrying on public service functions, such as the business of railroads, street railways, gas and electric light companies, trust companies, water companies, and insurance companies with capital stock. It is evident to any one that no value in any corporation could escape taxation, with this law in force. Whatever the value given to the shares of stock by patent rights, secret processes, or benefits derived from the tariff, was included and taxed. There was no escape for any corporation subject to this law.

However, there was nothing to prevent a Massachusetts manufacturing or commercial industry from organizing into a corporation under the laws of some other State. And upon such foreign corporations the tax laws rested with a different and fre-



quently a less weight. Previous to 1903 Massachusetts had no system for the taxation of foreign corporations as such. They were all subject to the general property tax. They were all taxed by the towns where their property was situated upon their real estate, machinery, merchandise and other tangible property. They were not taxed upon their moneys and credits on the theory that this kind of personal property had no taxable *situs* in Massachusetts. The theory of the laws was that such property was located, for purposes of taxation, at the legal domicile of its owner. Such legal domicile, in the case of a foreign corporation, is the parent State. Therefore, the owners of a manufacturing or mercantile industry who were considering the question of becoming a corporation had before them this question, among others: "How will the tax laws of Massachusetts affect us if we become a domestic corporation, and how if we become a foreign corporation?"

As we already have seen, a domestic corporation would be taxed by the town upon the value of its real estate and machinery, and by the State upon its corporate excess; and its shares of stock would be exempt from taxation in the hands of the individual holder. A foreign corporation would be taxed by the town upon the value of its real estate, machinery and merchandise, by the State upon nothing,<sup>7</sup> and its shares of stock would be subject to taxation in the hands of the individual, if discovered by assessors. If the value of the corporate excess were to exceed the value of the merchandise, probably the industry would organize as a foreign corporation. In this way the taxes of the corporation itself would be less. To be sure, its shares of stock would be subject to taxation in the hands of the individual holder resident in Massachusetts. But very likely the owners of the business would be willing to run the risk of the discovery of these shares. In the case of the public-service business, such as railroads and electric light and telephone companies, there was not the

<sup>7</sup> By Acts of 1903, Chap. 437, Sec. 75, amended by Acts of 1907, Chap. 578, every foreign corporation "having a usual place of business" in Massachusetts pays an annual excise of one-fiftieth of one per cent. of the par value of its authorized capital stock, such excise not to exceed \$2,000 from any one corporation. This excise produced in 1909 a revenue of about \$250,000. Previous to 1903 no general excise tax was paid by foreign corporations.

same opportunity for choice. The laws of Massachusetts controlling these classes of corporations in matters other than taxation were such that it was rather for their advantage to be incorporated under the laws of this Commonwealth. Then, too, the legislature had caused this scheme for the taxation of the corporate excess to apply to public-service corporations doing business in Massachusetts whether or not they were formed under Massachusetts laws.

During the fifteen or twenty years preceding 1900 there was a large increase everywhere in the number of manufacturing and mercantile corporations. Some of the States so framed their corporation laws as to invite men and industries from outside their borders to incorporate under those laws. New Jersey, Delaware, and Maine were especially active in thus bidding for foreign patronage. The result was that Massachusetts men were organizing as foreign corporations much more frequently than as domestic corporations. Taxation was not by any means the only feature in the laws which induced this expatriation. The fact was that previous to 1903 the corporation laws of the Bay State had not kept pace with the great industrial and financial changes of the preceding generation. Accordingly, in the summer of 1902 a commission was selected to report to the legislature of the following year what changes should be made in the laws relating to manufacturing and mercantile corporations. Their examination was thorough, their report was exhaustive. Their recommendations were in the main adopted.<sup>8</sup> We are not now concerned with any changes made in the corporation laws except in matters of taxation. The recommendations of this commission as to taxation were two: *First*, that there should be deducted from the value of the corporate franchise, in addition to the value of the real estate and machinery of the corporation taxed by the town of Massachusetts, the value of any property of the corporation situated outside of Massachusetts and subject to taxation by the laws of the State where it was situated; and *second*, that there should be a further deduction of the value of securities owned by the corporation, which securities, if owned by a natural person resident in Massachusetts, would not be subject

<sup>8</sup> Acts of 1903, Chap. 437.



to taxation. It is evident that these two items of deduction served to reduce the value of the corporate excess upon which the State levied its excise tax, and thus to reduce the amount of the tax. The commission found it was necessary to grant this favor in order to induce Massachusetts men to organize their business under Massachusetts laws. Neither one of these recommendations changed the theory of the law in the slightest. The law continued to be an excise upon the commodity of existence as a corporation.

These two changes were adopted by the legislature in 1903. The legislature itself added one other modification quite different in character and less in accord with the underlying principles of excise taxation. The further change made by the legislature was the addition to the law of a provision limiting the value upon which the Tax Commissioner could assess his tax. The limit was fixed at 120 per cent. of the value of the real estate, machinery, merchandise, and taxable securities of the corporation, diminished by the value of its real estate and machinery in Massachusetts, its property subject to taxation outside of Massachusetts, and its nontaxable securities. There was no logical reason why such a limitation should be made, or why it should be 120 per cent. instead of 150 or 110. But it was argued that the primary factor in taxation has always been property, that this law enacted in 1864 taxed not only such value as was given to the corporation by its property, but also the value given to it by the skill and wisdom of its managers, that no individual was ever taxed upon his skill and wisdom, that in the industrial conditions now existing corporate existence had become a necessity, but that Massachusetts ought not to take advantage of this necessity to the full extent. In short, it was set forth that Massachusetts should not tax her manufacturing and mercantile corporations upon a valuation exceeding 120 per cent. of their property, if she expected her people to incorporate under her laws.

This argument appealed to the legislature and the limitation was written into the law. Surveying the whole matter from the point of view of logic and academic principle, we must regret that this limit was ever adopted. The law as before existing was an excise upon the whole value of a privilege. With the adoption

of this limitation it became an excise upon only a part of the value of the privilege. But expediency is a word of heavy weight in matters of taxation. Actual possibilities frequently fall short of correct principles. The changes made in the law in 1903 have caused a large increase in the number of domestic manufacturing and mercantile corporations. In 1902 there were 2,000; now there are over 7,000. The amount of revenue collected from them has largely increased. In the great majority of cases Massachusetts citizens can afford to incorporate under Massachusetts laws. The State continues to impose the excise upon the privilege of corporate existence and to derive public revenues from those who have the money with which to make payment.

Such, in bare outline, is the history, the constitutional foundation and the statutory form of a law which is the distinctive contribution of Massachusetts to the subject of taxation. There are innumerable details which it has been impossible to mention. Many decisions of the Supreme Judicial Court have been handed down relating to specific sentences or clauses of the act, or passing upon the correctness of the action of the Tax Commissioner under its provisions. This law first enacted in 1864, with its amendments and additions, stands as probably the most successful attempt ever made in this country to levy adequate taxes upon those artificial persons, corporations. Laws of others States have undertaken to tax the corporations more heavily, but either such laws have been declared unconstitutional, or else the corporations have all run away from them. The Massachusetts law possesses at least five virtues which every tax law ought to have: (1) It can be administered with uniformity and exactness. (2) It produces a large revenue. (3) Its enforcement costs but little. (4) Its evasion is difficult. 5) It has the moral support of the people because it is essentially sound in principle.

In the administration of the law the first and principal duty of the Tax Commissioner is to determine the value of the share. The shares of most of the public-service corporations and of many of the manufacturing and mercantile corporations are bought and sold on the exchanges, or in the public auction rooms. These sales are reported in the financial columns of the press, and are of great assistance to the Tax Commissioner in his determina-



tions of value. In the case of much the larger number of manufacturing and mercantile corporations the shares are never publicly sold. In these cases the value of the corporate franchise (i. e., the value of all the shares) is based upon the value of all the assets above the debts of the corporation; but in these cases the Tax Commissioner takes cognizance also of the earnings, dividends and extra-hazardous risks of the business, and of the present state of the industry of which a given corporation is an individual part. The total revenue produced by this tax in 1910 was \$8,146,044.69. Of this the public-service corporations contributed \$4,799,310.05, and the manufacturing and mercantile corporations \$3,346,734.64. About 80 per cent. of this total amount was distributed to the towns and 20 per cent. was retained by the Commonwealth. This 20 per cent. was collected on account of shares owned by nonresidents of Massachusetts.

By an Act of 1910 the method of distribution of the tax collected from manufacturing and mercantile corporations was changed. Beginning with 1910 the Commonwealth retains the tax collected on account of shares owned by nonresidents of Massachusetts as heretofore, but the remainder of the tax paid by these corporations is distributed to the cities and towns where the property of the corporation is located. Thus those municipalities receive the tax which furnish police and fire protection to the property and schools for the children of the employees. This scheme of distribution would appear more just than the former, which was established in the days when most of the stock of corporations was owned by the individuals who conducted the business and who lived in the place where it was carried on. As for the public-service corporations, however, the tax is still distributed on the basis of the residence of the shareholders.

A few illustrations of the actual working of this franchise tax law may make clearer its intent. A railroad has outstanding, on April 1, 200,000 shares of stock, which upon that day sell in open market at \$220. The value of the corporate franchise is thus

$$200,000 \times \$220, \text{ or } \$44,000,000.$$

The total mileage of the railroad is 200: of this 150 miles are in Massachusetts. Accordingly, the value of the corporate fran-

chise in Massachusetts<sup>9</sup> is three-fourths of \$44,000,000, or \$33,000,000. The cities and towns report valuations in the aggregate of \$18,360,000 upon the real estate and machinery<sup>10</sup> of the corporation. This is deducted from \$33,000,000 and there remains \$14,640,000 as the value of the corporate excess upon which the Tax Commissioner assesses the tax at the rate (1910) of \$17.60 per thousand. The tax is \$257,664.

A telephone company, chartered perhaps in another State, has outstanding 731,000 shares of stock, selling in open market at \$140. The value of the corporate franchise is thus

$$731,000 \times \$140, \text{ or } \$102,340,000.$$

The total number of telephones owned or controlled by the company is 4,200,000: of these 3,600,000 are outside of Massachusetts and 600,000 inside the State. The value of the corporate franchise in Massachusetts<sup>11</sup> is therefore one-seventh of \$102,340,000, or \$14,620,000. Cities and towns assess taxes upon real estate and machinery<sup>12</sup> having an aggregate valuation of \$3,700,000. The value of the corporate excess is, therefore, \$10,920,000, yielding a tax of \$192,192.

A trust company has outstanding 20,000 shares, selling in open market at \$306. The value of its corporate franchise is therefore

$$20,000 \times \$306, \text{ or } \$6,120,000.$$

It owns a bank building assessed at \$340,000 and holds Massachusetts real estate mortgages<sup>13</sup> in the amount of \$3,400,000.

<sup>9</sup> Acts of 1909, Chap. 490, Part III, Sec. 41.

<sup>10</sup> 4 Metcalf, page 564, holds that railroad corporations are not subject to local taxation upon the land included in the right-of-way, nor on buildings or machinery located thereon. Land, buildings and machinery taxed to the railroad are therefore entirely outside the right-of-way.

<sup>11</sup> Acts of 1909, Chap. 490, Part III, Sec. 41.

<sup>12</sup> Machinery includes "underground conduits, wires and pipes laid in public streets, and poles, underground conduits and pipes, together with the wires thereon or therein, laid in or erected upon private property, or in a railroad location by any corporation except street railway companies . . ."—Acts of 1909, Chap. 439.

<sup>13</sup> 137 Mass., page 80, holds that in the assessment of the corporate franchise tax mortgages upon Massachusetts real estate should be treated as real estate for the purposes of deduction.



The total deduction to be made is thus \$3,740,000; the value of the corporate excess is \$2,380,000; the tax is \$41,888.

A street railway company has outstanding 10,756 shares of stock. They sell in open market at \$165. The value of the corporate franchise is thus

$$10,756 \times \$165, \text{ or } \$1,774,740.$$

The cities and towns tax upon a valuation of \$587,180; the value of the corporate excess is therefore \$1,187,560; the tax is \$20,901.05.

An insurance company, if organized under Massachusetts laws with capital stock, is taxed in the same way, except that the deductions made by the Tax Commissioner from the value of the corporate franchise are somewhat more extensive in character. The law governing these deductions (Acts of 1909, Chap. 267) provides that the Commissioner shall deduct,

In case of a stock insurance company the value as found by the tax commissioner of its real estate subject to local taxation wherever situated, and of securities which, if owned by a natural person resident in this commonwealth, would not be liable to taxation; also the value as found by the tax commissioner of its personal property situated in another state or country and subject to taxation therein.

All of these taxes, except that assessed upon the street railway company, are distributed upon the basis of the residence of the shareholders: the Commonwealth retains for her own use the amount of tax received on account of shares owned by nonresidents of the State, and distributes the remainder to the cities and towns where the shareholders reside, in proportion to the number of shares owned by the residents of such towns respectively. In the case of the street railway tax the Commonwealth retains such part of the tax as is proportional to the track mileage in State parks and reservations, and distributes the remainder to the cities and towns in which the street railway has tracks in the public streets, in proportion to such trackage in each municipality.

An analysis of the taxation of a manufacturing or mercantile corporation is much more intricate, and frequently the law applies with surprising results. Let us assume that three different corporations, each with a capital stock of \$500,000, present to the Tax Commissioner tax returns as follows:

## CORPORATION "A."

Assets		Liabilities	
Real Estate.....	\$260,000	Capital Stock.....	\$500,000
Machinery.....	210,000	Notes Payable.....	120,000
Merchandise.....	300,000	Accounts Payable.....	145,000
Accounts Receivable.....	175,000	Profit and Loss .....	230,000
Cash.....	50,000		
Total.....	\$995,000	Total.....	\$995,000

All of this property is in Massachusetts.

## CORPORATION "B."

Assets		Liabilities	
Real Estate.....	\$ 45,000	Capital Stock.....	\$500,000
Machinery.....	30,000	Notes Payable.....	10,000
Merchandise.....	125,000	Accounts Payable.....	100,000
Accounts Receivable.....	400,000	Profit and Loss .....	230,000
Cash.....	50,000		
Patent Rights.....	75,000		
Bonds of Mass. ....	75,000		
Stock of Penn. R. R. ....	40,000		
Total.....	\$840,000	Total.....	\$840,000

All of this property is in Massachusetts. The bonds of Massachusetts are tax-exempt if owned by a natural person resident in Massachusetts; the Pennsylvania Railroad Company's stock is taxable if so owned.

## CORPORATION "C."

Assets		Liabilities	
Real Estate.....	\$200,000	Capital Stock.....	\$500,000
Machinery.....	200,000	Notes Payable.....	70,000
Merchandise.....	300,000	Accounts Payable.....	200,000
Accounts Receivable.....	250,000	Profit and Loss .....	230,000
Cash.....	50,000		
Total.....	\$1,000,000	Total.....	\$1,000,000

The business of this corporation is carried on in Chicago: all of its property as here listed is by the laws of Illinois subject to taxation.

In each of these three cases the book value of the entire capital stock is \$730,000 and of each share thereof (5000 shares of a par value in each case of \$100) \$146. For the sake of simplicity in our analysis let us assume that in each case the Tax Commissioner assesses the shares at \$160 each. He adopts this valuation because each corporation is successful, pays good dividends each year and is carrying on a business which throughout the country



is thriving; the stock of all three corporations is closely held and is not sold publicly. The tax in each case is computed as follows:

## CORPORATION "A."

5,000 shares at 160 =	\$800,000.00	value of corporate franchise
<i>Deduct:</i>		
Real Estate and Machinery taxed by the city of Boston	470,000.00	
Balance—"Corporate Excess".	\$330,000.00	
Rate per \$1,000	17.60	
Tax	\$5,808.00	

## CORPORATION "B."

5,000 shares at 160 =	\$800,000.00	value of corporate franchise
<i>Deduct:</i>		
Real Estate and Machinery taxed by the city of Boston	75,000.00	
Tax—exempt Bonds	75,000.00	
Balance—"Corporate Excess".	\$650,000.00	

But the law provides, in the case of a manufacturing or mercantile corporation, that the maximum value upon which this franchise tax may be predicated is 120 per cent. of the value of the real estate, machinery, merchandise and taxable securities of the corporation, diminished by the value of the real estate and machinery locally taxed in Massachusetts, the value of the property outside of Massachusetts and subject to taxation where located and of the value of the tax-exempt securities. Accordingly the tax is computed as follows:

Real Estate	\$45,000.00	
Machinery	30,000.00	
Merchandise	125,000.00	
Securities taxable	40,000.00	
Total	\$240,000.00	
Add 20 per cent.	48,000.00	
Maximum taxable value	\$288,000.00	
<i>Deduct:</i>		
Real Estate	\$45,000.00	
Machinery	30,000.00	
Tax—exempt Bonds	75,000.00	150,000.00
Balance—"Corporate Excess"		\$138,000.00
Rate per \$1,000		17.60
Tax		\$2,428.80

CORPORATION "C,"	
5,000 shares at 160 =.....	\$800,000.00 value of corporate franchise
<i>Deduct:</i>	
Value of property outside of Mass. and subject to taxation where situated.....	\$1,000,000.00
Balance .....	0

For a case like this the law provides a minimum tax of one-tenth of one per cent. of the Commissioner's valuation of the stock, and by this computation the corporation pays to the Commonwealth one-tenth of one per cent. of \$800,000, or \$800.

These illustrations show that the computation of the tax is comparatively simple in the case of the public-service corporations, when once the value of the share has been established, and that the tax of the manufacturing or mercantile company may figure out to any one of several results. The practice of the Tax Commissioner in his treatment of questions and distinctions arising in connection with this tax is well established. Rulings of the Attorney-General of the Commonwealth, and very many decisions of the Supreme Judicial Court, have made a body of law and of interpretation which secures uniformity as far as possible under the terms of the statute. The taxation provisions of the Massachusetts law do not induce outside interests to incorporate in Massachusetts, but in general Massachusetts concerns can incorporate under the laws of their own State without undue fear as to the amount of their contribution to the public revenues.

CHARLES A. ANDREWS.

Deputy Tax Commissioner of Massachusetts.



## THE STATISTICAL WORK OF THE FEDERAL GOVERNMENT—II.

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### CONTENTS.

Statistics of agriculture, p. 374 ; railway statistics, p. 377 ; concentration of Federal statistical work, p. 378 ; creation of the Department of Commerce and Labor, p. 379 ; statistical reorganization considered, p. 381 ; critical review of Federal Statistics, p. 384 ; unreliability, p. 384 ; delays in publication, p. 385 ; duplication, p. 388 ; conclusion, p. 390.

### IV.

IT is an interesting fact that the Department of Agriculture, now a well-recognized branch of the Federal Government, had its birth in a legislative clause directing the Patent Office to collect seeds and statistics. This was in 1839; and from that year to 1862, with but few exceptions, the Patent Office was directed annually by law to expend specified sums in the collection and tabulation of agricultural statistics. These statistics appeared in the regular reports of the Commissioner of Patents.

The United States Patent Office was founded in 1836. On March 3, 1839, Congress provided<sup>23</sup> "that a sum of money not exceeding one thousand dollars be, and the same is hereby appropriated, out of the patent fund, to be expended in the collection of agricultural statistics, and for other agricultural purposes."

Agricultural statistics are mentioned first in the foregoing section, and other agricultural purposes second. It is correct to say,

NOTE. To obviate the possibility of misunderstanding, the writer wishes to make more explicit a statement which appeared in the first installment of this paper (*YALE REVIEW*, November, 1910).

The final paragraph on page 307 limited the work of the State Department Bureau of Statistics, after 1880, to the preparation of monthly consular reports. As a matter of fact, that bureau continued to issue its quarterly statements of exports declared before American consuls abroad, as well as the regular annual volumes on Commercial Relations. These publications were issued by the Department of State up to the organization of the Department of Commerce and Labor.

<sup>23</sup> 25th Cong., 3d Sess., Chap. 88.

then, that the Department of Agriculture grew out of a provision for statistical work in the Patent Office.

In 1840 and 1841 no record appears of an appropriation for agricultural statistics; but beginning with 1842 growing amounts were provided—first a thousand dollars a year, then increasing amounts up to one hundred and five thousand. The enlarging importance and scope of the agricultural statistics collected by the Patent Office are clearly indicated by the foregoing figures.

The Commissioner of Patents, in his annual report to Congress for 1841,<sup>24</sup> naïvely remarked that he hoped these agricultural statistics would guard against monopoly or an exorbitant price.

The collection of statistics of agriculture remained a part of the work of the Patent Office, even after it was covered into the Interior Department in 1849, until the establishment in 1862 of the Department of Agriculture. Section three of the establishing act<sup>25</sup> directed the Commissioner of Agriculture to "acquire and preserve in his Department all information concerning agriculture which he can obtain . . . by the collection of statistics, and by any other appropriate means within his power."

From that day to this the statistical section of the Department of Agriculture has been provided for by congressional action, the appropriation for collecting agricultural statistics being separated from appropriations for other agricultural purposes after 1865. A brief glance at an early report of the Statistician indicates the nature of his work at that time. It occupied forty-five pages in the annual report of the Commissioner of Agriculture for 1865, and covered, among other things, the subjects of crops, farm stock, wages of farm labor, and, to a limited degree, agricultural exports and imports.

In 1876 there is a foretaste of the establishment of the Forest Service, now a regular division of the Department of Agriculture, in an act<sup>26</sup> appropriating two thousand dollars for the prosecution of "investigations and inquiries, with the view of

<sup>24</sup> Pp. 4-5.

<sup>25</sup> 37th Cong., 2d Sess., Chap. 72.

<sup>26</sup> 44th Cong., 1st Sess., Chap. 287.



ascertaining the annual amount of consumption, importation, and exportation of timber and other forest-products, the probable supply for future needs," etc. This work grew within a decade into a Division of Forestry, whose bulletins, first issued in 1887, have been largely of a technical rather than statistical nature. Annual figures of lumber production are now prepared by the Forester, in coöperation with the Census Bureau.

Our Forest Service, then, as well as the Agricultural Department itself, grew out of the work of collecting statistics, in one case general statistics of agriculture and in the other statistics of timber and forest products.

In 1903 the statistical division of the Department of Agriculture was formally christened the Bureau of Statistics. To-day, with divisions of Domestic Crop Reports, Production and Distribution, and a miscellaneous division devoted to editorial work, the agricultural Bureau of Statistics publishes periodical estimates of crop acreages, crops, crop prices and values, and statistics of dairy and meat products, farm animals and agricultural imports and exports. These statistics are secured through its own agents, and by a system of coöperation with foreign governments<sup>27</sup> and with farm institutes, granges, boards of trade and individual farmers.

The statistical work of the Department of Agriculture has been severely criticised in recent years on the ground that it consists merely in estimates, and that the estimates are of no greater value than if prepared and issued by private individuals. Especially severe criticism has been made of the cotton estimates of the bureau.<sup>28</sup> After each census year, the crop figures of the agricultural Bureau of Statistics are revised to agree with those of the Census Bureau. It is the opinion of the writer that there

<sup>27</sup> The United States Government is by treaty a supporting subscriber to the International Institute of Agriculture at Rome, organized in 1905, which publishes international crop reports each month. These reports are based on official figures furnished by the supporting governments of the institute. For a description of the work of the Institute, see C. C. Clark, "International Crop Reporting Service," *Publications American Statistical Association*, September, 1910.

<sup>28</sup> See among others Professor H. Parker Willis's article, "Cotton and Crop Reporting," *Jnl. of Pol. Econ.*, xiii, 1905, pp. 506-535.

is a distinct field of agricultural statistics in which the Department of Agriculture may well work, and that the term "Bureau of Estimates," sometimes scornfully applied to the Bureau of Statistics of that Department, does not *per se* carry criticism, inasmuch as crop reporting is necessarily a matter of skilled estimating.<sup>29</sup>

## V.

As the ten years beginning 1870 represented a decade of great activity in American railway building, it is natural to find the Federal Government entering for the first time, during that decade, the field of railway statistics. The Division of Internal Commerce of the Bureau of Statistics in its first report, issued June 30, 1876, described the principal trunk railroads of the country and discussed various transportation questions. The statistics involved in these discussions were for the most part woven into the text of the report, and were accompanied by maps of a number of transportation systems. In 1878 there was created by law the office of Auditor of Railroad Accounts in the Interior Department. The duties of the Auditor were to prescribe a system of reports from such railways as had been granted aid of any kind by the United States Government. These railways were ordered to report to him periodically and to submit books, agreements, and other documents whenever so directed.

In 1882 the title of the Auditor was changed to Commissioner of Railroads, but his duties and reports remained much the same as before until 1887, when the act to regulate commerce and to establish an Interstate Commerce Commission<sup>30</sup> was passed. The important paragraph of that act, so far as the collection of statistics is concerned, was the twentieth section, which authorized the Interstate Commerce Commission to require annual reports from all common carriers subject to the provisions of the act, i.e., those engaged in interstate commerce.

<sup>29</sup> The crop estimates of the Department are based on the reports of a large force of agents and correspondents—approximately 130,000 in 1910. See annual report of the chief of the Bureau of Statistics for 1910.

<sup>30</sup> 49th Cong., 2d Sess., Chap. 104.



Under this twentieth section, which was considerably broadened in scope in 1906, the Interstate Commerce Commission has, each year since its inception, published a report on Statistics of Railways, now a bulky volume of several hundred pages. This report presents the statistics of all the railways in the country subject to the act, and is prepared by the Bureau of Statistics and Accounts of the commission.

The general tables of the report present physical, financial, and operating statistics of railways under six main heads, as follows: mileage and intercorporate relationships, capitalization, earnings and income, general expenditures, charges against income, general balance sheet. In addition, there are included tabular statements of railway employees and wages, railway accidents, passengers and passenger mileage, freight and freight mileage, commodity movements, equipment, and taxes.<sup>31</sup>

By an act approved March 3, 1901, railways were directed to report each month to the Interstate Commerce Commission accidents occurring on their lines. This is in addition to the statement of accidents made by each railway in its annual report to the commission. All accidents reported under the act of 1901 are tabulated by a special Accident Division, and the results published by the commission in quarterly bulletins. These bulletins serve as a check on the accident figures compiled by the railways themselves and reported annually to the commission.

## VI.

Before entering on a discussion of statistical concentration, it may be instructive to glance for a moment at certain striking parallels between the growth of governmental agencies of statistical work and the growth of biological agencies or functions. In biological development, the tendency of a function at its first appearance is to find exercise through the agency of some preëxisting organ, even though the character of such organ may actually be quite different from that of the incipient function.

<sup>31</sup> For a compact review and criticism of the statistics published by the Interstate Commerce Commission, see Lewis H. Haney, "Railway Statistics," *Publications American Statistical Association*, September, 1910.

With progressive development of the latter, however, a distinct and independent organ is evolved, specializing in the field of the work proper to the new function. Exemplification of the same tendency in government statistical work is shown in the beginning of the Department of Agriculture and its statistical activities under the Patent Office, because of the duty imposed upon the latter to be the Government's organ of the promotion of science and the useful arts; in the original assignment of the Bureau of Statistics to the Treasury Department, because of the close relation between revenue collection and business interests; in the beginning of the collection of weather statistics under the War Department, because that Department possessed at the time the only Federal agency equipped with machinery for the instant transmission of intelligence, namely, the Signal Service; and in the centering of the astronomical work of the Government in the Navy Department, because of the necessity felt by that Department of preparing a nautical calendar. As the statistical work thus originated has developed, there have grown up specialized bureaus to carry it on. The coördination and concentration of these bureaus is the final step in the evolutionary process.

The most recent phase of the history of Federal statistics, then, is that in which the transfer of statistical bureaus to one general department has been inaugurated. At the opening of the twentieth century there existed a number of statistical bureaus scattered through the government departments, doing work along similar lines in some respects, yet separated from each other by departmental barriers. Some of the anomalies presented by this distribution of statistical bureaus seem to have impressed Congress in the early years of the present decade; for when a bill to establish a Department of Commerce was introduced into the Senate in 1901, it was so amended during its progress through the two houses as to endow the Department finally brought into being in 1903 with large power to gather unto itself the statistical activities of the United States Government. Not only were the important statistical bureaus transferred to the new Department, but the Secretary of Commerce and Labor was authorized in Section 4 "to rearrange the statistical work of the bureaus and offices confided to said Department,



and to consolidate any of the statistical bureaus and offices transferred to said Department."<sup>32</sup>

Section 12 went even a step further, and authorized the President "by order of writing, to transfer at any time the whole or any part of any office, bureau, division or other branch of the public service engaged in statistical or scientific work, from the Department of State, the Department of the Treasury, the Department of War, the Department of Justice, the Post-Office Department, the Department of the Navy, or the Department of the Interior, to the Department of Commerce and Labor." The Department of Agriculture is significantly omitted. Practically, only a few bureaus—not over half a dozen—could ever be affected by this provision; as a matter of fact, the authority thus conferred upon the President has never been exercised in the faintest degree.

Not only was the idea involved in the sections just quoted a new one, introduced into the bill during the lengthy debates that preceded its passage, but it does not seem to have been in the President's mind when he recommended the establishment of a Department of Commerce in his annual messages to Congress in 1901 and 1902. The creation of an executive Department of Industry, or Commerce, had been a subject of petition and discussion for forty years,<sup>33</sup> but this idea of the concentration of statistical work as one of its functions appears to have been new.

The act establishing a Department of Commerce and Labor was approved February 14, 1903, and took effect at once.

To the new Department there were transferred the following bureaus:

From the Treasury Department—Bureau of Statistics, Bureau of Immigration, Steamboat-Inspection Service, Lighthouse Board, Bureau of Navigation, Coast and Geodetic Survey, and National Bureau of Standards.

<sup>32</sup> This section was introduced into the bill as an amendment by Senator Quarles of Wisconsin, in the Senate, on January 22, 1902, and by Mr. Mann of Illinois, in the House, on January 17, 1903.

<sup>33</sup> See *Organization and Law of the Department of Commerce and Labor*, Washington, G. P. O., 1904, pp. 11-21.

From the Department of the Interior—Census Office, Fish Commission.

From the Department of State—Bureau of Foreign Commerce, to be consolidated with the Bureau of Statistics.

The Department of Labor, an independent bureau.

There were also created *de novo* in the Department of Commerce and Labor a Bureau of Manufactures and a Bureau of Corporations, neither of which had administrative functions. These bureaus, as well as others listed above, were to be information collecting agencies along definite lines indicated by law.

Hardly had the new Department been organized in 1903, when the Secretary of Commerce and Labor appointed a commission to consider the question of possible reorganization of the statistical work of the Department. This action was taken under the fourth section of the establishing act, already described. The commission, through a subcommittee, recommended the consolidation of the Bureau of Statistics with the newly-created Bureau of Manufactures, under the title "Bureau of Foreign Commerce." They further recommended the breaking up of the proposed bureau into three divisions—one a Division of Trade Statistics, which would compile export and import statistics, one a Division of Foreign Commerce, which would publish consular reports and other information regarding foreign commerce and the extension of foreign markets, and one a Division of Publicity and Information, which would cover much the same field as that allotted to the Bureau of Manufactures, i.e., the promotion of American manufacturing interests by study of home and foreign markets and by the publication of information regarding them.

The recommendations of the committee were not carried out, and on September 20, 1907, a second committee on statistical reorganization was appointed by the Secretary of Commerce and Labor. This committee held several hearings, at which a number of statisticians, within the government service and without, were asked to testify. The committee's report,<sup>34</sup> submitted in the spring of 1908, made recommendations as follows:

<sup>34</sup> Report of Committee on Statistical Reorganization, Washington, G. P. O., 1908, pp. 242.



1. That the Bureau of Statistics be not consolidated with and made a part of the Bureau of the Census. This had been one of the problems given the committee to solve.

2. That the Bureau of Manufactures and the Bureau of Statistics be consolidated into one bureau; and that the bureau thus formed be called the Bureau of Foreign and Domestic Commerce. This recommendation is in effect the same as that of the earlier committee.

3. That the Division of Domestic Commerce of the new Bureau of Foreign and Domestic Commerce be enlarged and strengthened, and that Congress be asked to appropriate a sum sufficient to insure the collection, the preservation, and the publication of more complete and adequate statistics of internal commerce.

4. That there be created within the new Bureau of Foreign and Domestic Commerce a separate Division of Tariffs.

5. That an interdepartmental statistical committee be formed under the jurisdiction of the Secretary of Commerce and Labor, said committee to be created by executive order and to consist of a representative from each of the executive departments and independent government establishments.

The positive recommendations of this committee regarding reorganization have so far been as little regarded as the recommendations of the earlier committee. The suggestion that an interdepartmental statistical committee be appointed received more favorable attention, and such a committee was appointed by the President in the fall of 1908. To date, however, no report submitted by it has been made public.

Thus the Secretary of Commerce and Labor, in whose hands was placed considerable power to consolidate the statistical bureaus brought together in his Department, has not as yet exercised that power in any degree. Two committees, after careful study, have recommended definite points of consolidation, but no final action has yet been taken. The movement toward statistical concentration, which made a long stride forward with the organization of the Department of Commerce and Labor, has since that date been at a standstill. A number of reasons may be assigned for this check to the movement. One is found in the

quick succession of Secretaries who have occupied the headship of the Department since its establishment. There have been four in the seven years of the Department's existence, but one of whom has served over two years. It is not hard to see why each Secretary, during his short term of office, has been reluctant to overturn the precedents of even his young Department; for it has been always easier, departing, to leave the question of reorganization to the incoming Secretary, than to face the problem and settle it once and for all. Another potent reason has been the strong element of personal equation involved. The hearings held by the second committee on reorganization in 1907 developed considerable feeling on the part of the chiefs whose positions seemed to be threatened by proposed or suggested changes. It would have been a determined Secretary indeed who would abolish offices and oust entrenched officials under such conditions. All of them have thus far found it easier to "stand pat."

It is only fair to say, moreover, that the question of consolidating the Bureau of Manufactures with the Bureau of Statistics was taken up by Secretary Nagel soon after accepting the portfolio of Commerce and Labor. He at once encountered the snag of adverse judicial opinion. In successive decisions by the Comptroller of the Treasury and the Attorney-General, it was held that Section 4 of the establishing act of 1903, which gave the Secretary of Commerce and Labor authority to consolidate any of the statistical bureaus *transferred* to the Department, does not apply to the Bureau of Manufactures, which was *created* by the act, and not transferred from some other Department. Secretary Nagel in his first annual report recommended that Congress definitely authorize the consolidation. He said: "It would serve to concentrate work; it would dispense with some duplication, and it would result in general economy."<sup>25</sup> This recommendation was approved by President Taft and transmitted to Congress in his message of 1909.

Finally, the whole question of the statistical organization of the Government has been involved in the recent proposed changes within the Department of Commerce and Labor—the to-be or

<sup>25</sup> Annual Report of the Secretary of Commerce and Labor, 1909, p. 33.



not-to-be of a central statistical bureau that should eventually take over all the statistical work of the Federal Government. The specter of such a possibility stalked through the hearings of 1907, and has clearly had a restraining hand on successive Secretaries who have considered the problem of statistical concentration. It is perhaps hardly strange, therefore, that the tide of concentration, for the time being at least, has been checked.

## VII.

To grumble is one of the inalienable rights of a free people; and the American people have exercised their right to the full. To grumble over government statistics has been a favorite occupation since the First Census, and one indulged in by all classes of people. The particular grounds of complaint have been many. Gross errors, delays in preparation and publication, duplication, unintelligibility of form, partial or one-sided treatment—these have been the most frequent indictments.

The earlier complaints were largely directed against error. We are told<sup>36</sup> that the methods and results of the First Census were viewed by the people with great suspicion—so much so that Secretary Jefferson, in sending out copies of the small census volume of 1790, felt obliged to explain the omissions and deficiencies of the work. Especially severe was popular criticism of the work of the census in 1840, a number of memorials being presented to Congress on the subject. One of these was submitted by the American Statistical Association in 1843,<sup>37</sup> in which detailed criticisms were made of the statistics regarding education, occupations, and the abnormal or defective classes. These criticisms were given careful legislative consideration, and resulted in much improved legislation for the census of 1850.

The published figures of the Census Bureau have rarely been free from attack on grounds of unreliability and inaccuracy. Among recent censuses, that of 1890 was subjected to considerable criticism. The American Economic Association in 1899

<sup>36</sup> Edward C. Lunt: *History of the U. S. Census, Publications Am. Stat. Association*, 1888; Wright and Hunt, *op. cit.*, pp. 16-17.

<sup>37</sup> House Report No. 580, 28th Cong., 1st Sess.

devoted a volume of 500 pages to critical essays on American census methods. These essays naturally related themselves in especial to the preceding census of 1890, as well as to the forthcoming census of 1900.<sup>38</sup>

The sources of all data should be carefully watched, and especially unofficial sources, for the unreliability of one item throws a shadow on all the items. Even to-day government documents sometimes include statistics the sources of which are not above suspicion. The text of every statistical report should contain an analysis of the errors or doubtful data that may have crept into the work.

Again, criticism has often been made, and justly, of discrepancies arising in statistical publications of the government—particularly discrepancies between the reports of different bureaus. There should be uniformity, not only of material, but also of terms, methods, classifications, weights and measures. Finally, the work of State and Federal statistical bureaus should be brought into greater uniformity. The first step, of course, is to induce State officials to bring their work into closer harmony with Federal returns. The work of the Bureau of Labor and the Census Bureau in securing the coöperation of State bureaus of labor statistics and other State agencies may be commended in this respect.

The timeliness of government reports has always been a favorite question for discussion. Hardly a census has completed its work within the time first prescribed by law, and the published results have drawn sharp attacks of censure for tardiness of appearance. The first two censuses were allowed nine months by law for the actual work of enumeration. In 1810 the time was cut to five months, and later extended to ten. In 1840 the first limit was ten months, which was raised to twelve and finally to nineteen. The law of 1850 lowered the time allowed to five months, but the allowance was not adhered to. In 1880 the limit was cut to fourteen days for cities and twenty-four for country districts. Since 1880 the allowance has ranged between fifteen

<sup>38</sup> *Publications of the American Economic Association*, March, 1899, pp. 516. In this connection, see also H. L. Bliss, "Our Misleading Census Statistics," *American Journal of Politics*, 1894, v., pp. 417-428. This article criticizes the 1890 statistics of wealth and wages.



and thirty days. The material has not only been delayed in collection, but also in tabulation and issue. The report of the First Census, fifty-six pages in length, was nearly fifteen months in preparation. The final volume of the census of 1850—the report on manufactures—did not appear until 1859. A number of the volumes of the census of 1860 were six years in preparation. The census of 1870 was completed within three years, but that of 1880 occupied nearly five. The last volume of the 1890 census appeared in 1897. These facts do not constitute so much a criticism of the Census Bureau itself as of the governmental system that allowed the loose ends of census work to trail from decade to decade. Conditions in this respect have improved considerably since the establishment of the permanent bureau.

The Census Bureau, however, has been by no means the sole offender against punctuality and timeliness. Hardly a government office is free from the taint of delay in publication. The commission of 1877 on the Bureau of Statistics pointed out<sup>39</sup> that the report of that bureau for 1876 had been delayed nearly a year after the close of the period for which it was made. The commission regarded six months as ample time for the preparation and issue of the report.

Current criticism has directed itself in particular against the Bureau of Statistics for delays in issuing its Monthly Summary of Commerce and Finance. The advance sheets, giving import and export figures according to a so-called "short schedule," are sent out from twenty-three to twenty-five days after the close of the month covered by the figures. The time required to prepare these sheets is two weeks longer than that required to prepare the report of the United Kingdom. It has been pointed out by the bureau, however, that the figures for the United Kingdom are collected from a compact region considerably less in area than the United States. Summaries of important districts, such as New York, sometimes do not reach the bureau until the twentieth of the month of issue, leaving but four or five days in which to collate and publish the figures. The writer feels that this criticism of the bureau has not always been well founded. It is a fair question, in fact, whether all oppor-

<sup>39</sup> Report of the Commission, p. 53.

tunity for criticism of the Bureau of Statistics would not vanish if the statistical bureau force of the New York Custom House could be strengthened in numbers, or if a more radical step were taken and the work of collecting commercial statistics were centralized at Washington. This system prevails in practically all the important European countries and in Canada, and has sometimes been recommended for the United States.

Severe criticism has been leveled against the Geological Survey on the score of delay in issuing figures of mineral production. Coal mining statistics are sometimes held back from one or (at the time of the Decennial Census) even two years after the season to which the figures apply.

Again, the annual statistical report of the Interstate Commerce Commission has for some years taken over a year to prepare and publish; and this although all railways are required by law, under severe penalty, to submit their reports within three months after the close of the fiscal year. It certainly seems that the report for 1909 should be in the hands of the public before the report for 1910 is due from the railways. The report covering the fiscal year 1908 was dated September 15, 1909, or fourteen and one-half months after the close of the year to which it related. Although dated September 15, the report did not actually come from the press for several months afterward. This condition is only partially alleviated by the fact that the text of the report is issued several months in advance of the final volume. The report for 1909, although dated July 1, 1910, was not ready for distribution till six months later.

The topic of timeliness deserves the careful attention of every government statistician in charge of publication work. The right of the American people to quick, as well as efficient, service from their paid employees is unquestioned; but if more bureau chiefs recognized the right and organized their forces accordingly, the many delays now encountered could be eliminated, and that without increase of appropriation or of force. The close causal relationship between timeliness and serviceability, as regards government publications, can hardly be overemphasized. If delay in covering a given field is unavoidable, material might easily be prepared in leaflet form while still current, one leaflet



to each subject, and distributed to the press. The larger book forms could follow later and be valuable for reference. This is the method largely followed by the Census Bureau at the present time. Or separate articles, such as now appear in the Yearbook of the Department of Agriculture, might be released originally as monographs, instead of being delayed and finally buried in a large volume.

The best example of timely information furnished by the Government to the general public is the daily bulletin issued by the Weather Bureau. Dependent on observations taken each morning at eight o'clock (Washington time), the bulletins are issued from distributing points throughout the country between eleven and twelve. In other words, the public is required to wait not longer than four hours for its weather information. Next to the weather bulletins, in point of timeliness, are the cotton ginning reports of the Census Bureau, the crop reporting bulletins of the Department of Agriculture, and the monthly summaries of the Bureau of Statistics.

The Federal Government has frequently been criticised for duplication of statistical work, especially since the multiplication of statistical bureaus in recent years. A duplication of statistical work exists where one bureau enters the field occupied by another bureau and secures the same (or nearly the same) material by different processes. It was of such duplication as this that a witness before the Statistical Reorganization Committee of 1907 was thinking when he laid down the following Eleventh Commandment for government officials: "Thou shalt not duplicate, neither shalt thou publish from two branches of the Government conflicting statistics covering the same products; neither shall two Bureaus send out statistics on the same questions to the producers of the country."

Several instances of duplication were pointed out as early as 1877 by the commission that investigated the Bureau of Statistics in that year. More recently, also, there have been discovered cases of duplication of statistical work. A number of these have been done away with since the creation of the permanent Census Bureau, as a result of the coöperation of that bureau with other statistical bureaus. The Bureau of Manufactures was severely

attacked, both in 1903 and 1907, as encroaching on the functions of bureaus already in existence at the time of its establishment. It was because of this that the consolidation of that bureau with the Bureau of Statistics was recommended. The consolidation is still under consideration; but the bureau has avoided criticism by largely staying out of the field that it was intended under the law to occupy.

A great deal was said before the Reorganization Committee of 1907 regarding the duplication of statistical work on the part of government bureaus in Washington. It was for the purpose of studying such duplication and making recommendations for its removal that the committee suggested the appointment of an interdepartmental statistical committee.

A careful search of the statistical publications of the Federal Government fails to reveal more than a half dozen cases of serious current duplication. There is sometimes a lack of coördination, leading to confusing results, but the instances of actually conflicting or duplicating statistics are very few. Hardly one of the instances found but can be eliminated by conference between the chiefs of the respective bureaus involved—out of court, as it were, and without the intervention of new or amended legislation.

Another criticism often made of government statistical work is that directed against it on the ground of faulty or insufficient interpretation. Here there are two schools of critics; one asserting that the Government should not attempt to interpret its figures at all, the other that it does not interpret them enough. The writer believes in a safe middle ground; for while bias is possible in the interpretation of figures, it is possible to present the figures themselves in so distorted or confused a way as at the same time to repel a student by masses of undigested statistics, and prevent him through lack of time and funds from properly interpreting the data for himself. For lack of proper interpretation, and because results are difficult to find and construe, much valuable material is to-day entombed. To be most fully effective, interpretative text summaries can be written in modern dignified journalistic style, in such a way as to suggest possible conclusions, without the least resort to dogma.



A study of the criticisms briefly outlined above will show that the weak points of Federal statistical work can be strengthened through the intelligent application of every government official to the problem of making his bureau an efficient medium of service to the public, and through the intelligent coöperation of officials with each other. What is needed is not so much a flood of legislation as an increased *esprit de corps* on the part of our public servants.

### VIII.

We have now traced, in a brief way, the development of governmental statistical work from its inception in the very Constitution itself down to the present day. While it is impossible at any point in this development to trace a definite plan of statistical organization, yet it is possible to discern a slow but distinct growth and advance in scope, complexity, and influence, on the part of Federal statistical bureaus. Usually commencing as individual offices or as mere clerical positions assigned to some existing branch of the service, they have grown, expanded, developed, have been split up and abolished, transferred and consolidated, and have gradually reached their present status.

The criticisms leveled against government statistical work have been noted, and suggestions have been made as to means of meeting or doing away with them. There have also been considered various proposals in the direction of improvement—improvement in speed, accuracy, utility, simplicity, forcefulness. These proposals can for the most part be adopted without legislative effort. Much has already been accomplished in the field of coöperation by the permanent Census Bureau, working intelligently with other bureaus.

It is certainly fair to say that the Federal Government has, from its earliest days, been unstinting in its appropriations for statistical work, and in its efforts to secure accurate and complete records of the state and progress of the people. The results, especially in the earlier days of the republic, were far too meager for the moneys expended; but that the zeal of Congress in the procurement of scientific data was well enough intended there

is no possible question, however spasmodically directed. And the more recent efforts toward statistical development have undoubtedly been more successful, both as to method and result, than the earlier ones. The past is gone. The question now is as to the future.

The real question that confronts the student of Federal statistics is that of further legislative action toward statistical concentration or consolidation. Is future development to lie along the line of increased coöperation among independent bureaus, or will it consist of a merging of all statistical activity into one central statistical bureau? Probably in the form of increased coöperation among bureaus, rather than in the concentration in one bureau of all the statistical activities of the Government. It is impossible to indicate in detail such reorganization of statistical bureaus as will assist the progress of coöperative and coördinative work, but it may be suggested that to bring together in one department all the bureaus with nonadministrative functions, such as the Bureau of Education, the Bureau of the Census, the Bureau of Statistics, and the Weather Bureau might be a wise move in such a direction, leaving the collection of other statistics to the bureaus most closely related, administratively, to the subjects involved.

The details of the reorganization very briefly touched on above can be worked out only after careful study. The main point to be emphasized here is that statistical concentration has probably gone far enough, and that intelligent coöperation is unquestionably the watchword of the morrow.

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## RHINE AND MISSISSIPPI RIVER TERMINALS.

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### CONTENTS.

River traffic in Duisburg-Ruhrort, p. 392; River traffic in Mannheim, p. 393; Mannheim's terminal facilities, p. 395; Mississippi terminals, p. 396; the Mississippi problem, p. 396.

THE Rhine, of all European rivers, has the most to teach those seriously interested in the modernization of American river transportation. Much of the eulogy bestowed on European waterways by returning trippers has been expended on canals and ditches in Holland and Belgium. Most of these, because of their small capacity, their antiquated floating stock and mode of propulsion, would have no more chance of competing against American railway transportation than have similar canals here which we have already seen succumb. Even in Holland they exist principally from commerce between those points, still numerous, which have no direct railway connection, or no such connection at all.

On the other hand, the Rhine has barges, tugs, transshipment facilities from steamer to barge at its seaports, from barge to rail at its river ports, and an organization of its river commerce which could be, with few modifications, transplanted to the United States. They result in river rates which, even when they are made to include the costs of transshipment, would be successful here.

The Rhine's two greatest river ports are Duisburg-Ruhrort and Mannheim. The former is the portal of the Rhenish-Westphalian industrial district whose center, in the midst of the Ruhr coal fields, lies fifteen miles back from the river. Over Duisburg-Ruhrort the industrial district gets its foreign ore, grain and lumber from Antwerp and Rotterdam; down stream the river port sends coal, pig iron and manufactured iron. Duisburg-Ruhrort sends upstream coal for all South Germany, to be transshipped at upper Rhine ports; downstream comes lumber from the diminishing forests of Bavaria and Baden.

While it is true that Duisburg-Ruhrort, with a river traffic of 21½ million tons<sup>1</sup> in 1907, surpassed Hamburg's total seaborne traffic of 20¼ million tons, the traffic of the river port was little diversified and its hinterland or tributary territory small, Ninety per cent. of those 21½ million tons consisted of five articles: iron ore, grain and wood in arrival, coal and pig iron sent. Duisburg is only 134 miles from Rotterdam and the saving which the water rates represent was not sufficient to permit imports on the Rhine to be transshipped any considerable distance eastward. This transshipment soon came into competition with direct rail shipment from Bremen on the Prussian railways, which by their rates consistently favor importation over German seaports. The same is true of exports. If Duisburg tried to transship westward, it came even sooner into competition with direct importation by rail over Antwerp. Twenty-two miles upstream lies Düsseldorf, another stirring Rhine port with its own hinterland. One hundred and thirty-four miles on the river and the saving it offers is not sufficient to coax higher-priced goods away from the rails, particularly when the hinterland which the river port dominates is not large enough to make the port a trade center in those articles.

In Mannheim these conditions are reversed. Mannheim, 354 miles from Rotterdam, has been, until this year, head of navigation on the Rhine; for six months of the year the river above was not navigable. Being at the head of navigation, it had no competition farther up river. The saving in freight which river carriage for 354 miles brought about enabled Mannheim to transship imports and collect exports from a territory comprising South Germany, Switzerland and northwestern Austria. For instance, in 1907 Mannheim sent by rail more than 20,000 tons of imported wheat to each of the following States: Baden, the Palatinate, Württemberg, Alsace and Switzerland. Mannheim is at the northern end of Baden, whose State railways give their lowest rates to Mannheim transshipments, which feed the long lines of the railway to the South. Other South German railways coöperate; they get as long a haul handling their exports and

<sup>1</sup> The total tonnage of freight moved on the Mississippi river system in 1906 was 19½ million tons.



imports over Mannheim as if they took them from the Prussian lines bringing them from German seaports.

Just as Duisburg-Ruhrort's water traffic surpasses that of Hamburg, so the water traffic of Mannheim, amounting to 10 million tons, is more than twice as great as that of Bremen, Germany's second seaport. Of the sixty-two items according to which river statistics in Germany are kept, Mannheim received more than 5,000 tons each of more than half the entire number. This illustrates how diversified the water traffic here is. For instance, in 1907 Mannheim received on the Rhine 4,495,273 tons of coal, 157,956 tons of petroleum, 86,618 tons of sugar, molasses and syrup, 86,618 tons of oilseed, 42,831 tons of flour and meal, 16,262 tons of coffee, 15,427 tons of rice, 12,032 tons of tobacco, 11,633 tons of wool, 10,382 tons of cotton, 8,074 tons of machinery; Mannheim shipped 174,203 tons of salt, 82,614 tons of manufactured iron, 70,164 tons of flour, 10,554 tons of rags, 10,062 tons of wine, 7,136 tons of machinery, 4,590 tons of glassware. Here we see not only bulk goods taking to the water, but also large quantities of what we call package freight and which we consider as not particularly promising for river transportation. As a matter of fact, the rivers of Germany probably transport a larger proportion of the total of higher-priced package freight moved than they do of the less valuable bulk goods. The reason is that on German railways, as on others, high-priced goods are charged more for transportation than low-priced ones, on the principle that the former can bear the higher charge. On German waterways the unlimited competition prevailing keeps the rate for all goods, whether high priced or low, close to the actual cost of transportation.

The prospect of having raw materials brought cheaply on the Rhine, the still better prospect of cheap "return" freight rates—for most of the barges go downstream empty—has resulted in a great settlement of exporting industries in Mannheim. In the district of Mannheim are 47,775 laborers, 20.3 per cent. of the entire laboring population of Baden.

Mannheim is a great focal point on which converge railroad lines in all directions. A vast territory has the advantage of 354 miles of cheap waterway transportation for its dealings with

foreign countries. The factors which make this possible have been already enumerated: proper facilities for the transfer of goods from steamer to barge in Rotterdam, from barge to rail in Mannheim, modern tugs and barges, coöperation of the railroads.

We do not mention the Rhine's channel, for this is the one respect in which our corresponding American waterway, the Mississippi, is better off than the Rhine. In spite of this there is a constant clamor on the part of Mississippi river cities for the Government to deepen the river's channel. The Mississippi has now for approximately 1,000 miles, from New Orleans to St. Louis, a low-water depth of 9 feet; the Rhine has a low-water depth of  $6\frac{1}{2}$  feet for 354 miles. And the advantage of water over rail transportation increases with the length of the haul.

Of the factors, above enumerated, which contribute to Mannheim's greatness, those most important for our consideration are the coöperation of the railroads and the existence of facilities for transferring freight cheaply between rail and water in Mannheim. If these were once given on the Mississippi system, the others would spring into life.

The attitude of the railways serving Mannheim has already been set forth. Let us consider the terminal facilities. The harbor of Mannheim consists of a large number of basins lined by perpendicular quays, alongside which barges can lie within reach of the movable cranes that run along the edge of the quay. These "portal" cranes straddle two railroad tracks. Directly behind the tracks are freight sheds; back of them more railroad tracks. The electric crane brings the freight up out of the barge, drops it into the waiting freight car if it does not require sorting or handling; otherwise the crane swings it across the tracks to the platform of the shed. Within the shed the freight can be sorted or otherwise handled and later unloaded from the back platform either into cars, or into drays if the goods are intended for city use. These tracks back of the shed are flush with the street.

All this applies to transit freight. Freight to be warehoused—such as coffee, sugar, wines—is unloaded by cranes in the same manner into warehouses situated like the freight sheds, at the



water's edge. Grain elevators let down their long probosces into the barges and suck or scoop up grain for their silos. Often enough a flour mill is directly connected with the grain elevator and receives its grain and ships its flour on the Rhine. Mannheim shipped 70,164 tons of flour in 1907. By way of comparison, the total tonnage of flour reported as moved on the Mississippi river system in 1906 was 81,900 tons.

The railroad tracks serving the harbor terminate in one great switching yard. Here the loaded cars, whether coming from barge, freight shed, warehouse or grain elevator, are classified and sent off in all directions.

The opposite of these conditions prevails at water terminals on the Mississippi and its tributaries. If there is any shed at all at such terminals, it consists of a floating wharf boat where the steamer discharges. Though labor in America is dearer than in Germany and hoisting machinery cheaper, no crane or other mechanical device is used for discharging the steamer. A horde of roustabouts, which form part of the crew, leisurely roll or tug the freight ashore. If the shipment is to go inland by rail, it must be drayed up the hilly levee and through the city streets to the receiving station of the railroad. The latter unwillingly takes the shipment and charges on it a high rate for having come part way by water instead of by another railroad. Whoever takes a steamboat ride on the Mississippi experiences at the terminals a similar difficulty in getting to and from the landing. Passengers will often stand the discomfort for the sake of a boat ride, freight has no such taste.

And yet the whole problem lies in getting the railroads to feed and distribute for the waterway. As Herbert Knox Smith says, port to port traffic is nothing, in inland as well as in ocean transportation. The quantity of goods exchanged between Hamburg and New York would not make even a second-class seaport of either of them. They are great ports because they collect and distribute shipments and receipts for a wide hinterland. Nothing but the same activity can make a great river port.

On channels in the Mississippi river system there is undoubtedly much still to be done. The Mississippi from St. Louis to St. Paul must be dredged to a low-water depth of 6 feet, instead

of 4 feet as at present. The canalization of the Ohio from Pittsburgh to Cairo for 9-foot depth must be carried forward and is being carried forward. The Government ought not to make appropriations for these matters any faster than it is doing now. The Government's duty, or that of its judiciary or legislators, is to overcome that decision of the Interstate Commerce Commission that the long and short haul clause of the 1887 Interstate Commerce Act did not apply where water competition is present. If the railroads can apply wholly disproportionate rates for feeding and distributing for the river on the one hand, for competing with the river on the other, the river has no future.

If fair railroad rates can thus be obtained, high charges of transfer between boat and rail can still keep freight off the water. The construction of proper water terminals to reduce these charges is the duty of the cities that desire to become river ports. Mannheim was built by the Baden State Railway: Mannheim is at the northern end of Baden and a terminal for its railway system just as seaports are such terminals here. Duisburg-Ruhrort, for historical reasons, is similarly an adjunct of the Prussian State Railways: because it belonged to certain private railways when these were taken over. All other harbors on the Rhine have been built by the cities. Düsseldorf, with a population of between 250,000 and 300,000, spent 18 million marks on her harbor. Because of the competition of nearby river ports for the common hinterland, Düsseldorf charges such low dues for the use of the harbor that it is operated at a yearly loss of 400,000 marks. Yet Düsseldorf carries the burden cheerfully, feeling that the gain to its forwarders, warehouses, wholesalers, shippers and laborers—later repaid the city in the property and the income tax—more than balances the loss.

Until that fatal decision of the Interstate Commerce Commission is reversed and until some city, for instance on that 1,000-mile stretch of 9-foot waterway from New Orleans to St. Louis, exhibits an activity similar to that of Düsseldorf, there may be grave doubts as to what useful purposes will be served by further Government outlays on the Mississippi.

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## THE BRITISH ELECTION ADDRESS.

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### CONTENTS.

The election address an interesting feature of British elections never before discussed, p. 398; Definition and description of an election address, p. 399; Development and change in Mr. Gladstone's political creed, as revealed in his election addresses, p. 400; Examples of debate between Gladstone and Disraeli as revealed in election addresses, p. 401; Brief epitome of Mr. John Burns's career, p. 404; Extracts from his address issued during the Budget campaign, p. 405; Comments upon the address, p. 407; Biography and characteristics of Mr. Balfour as a political leader, p. 408; Selections from his address, p. 411; Comments upon the same, p. 412; Description of Mr. Winston Churchill and his career, p. 413; Extracts from his address, p. 414; Contrast between the British election address and the American party platform, p. 416; Conclusion, p. 416.

AN American, who has had the opportunity to be present in Great Britain during an exciting general parliamentary election, must have noted with keen interest the differences between some of the methods connected with the formal registry of the will of the voters in the ballot box in the mother country and the customs of our own campaigns and elections. The writer, who was present as a close student of the epochal Budget campaign of December, 1909, and January, 1910, from the point of view of a citizen of the United States, found in the English methods some things to condemn and others to admire. Among the latter, the so-called "election address," which each candidate for the House of Commons is expected to issue to his constituents within two months or less of the date of election, should take high rank.

What the origin of this custom was, and for how many years it has been the unwritten law of England for a candidate to issue such an address to his constituents, it is not easy to determine with exactness. The oldest documents, thus far discovered in the Bodleian Library at Oxford, which are unmistakable election addresses go back to 1780. Some other documents, issued in 1749, may constitute an election address, though not in that distinct form. Certain it is that the English of the present day look upon it as a commonplace of politics, almost as firmly

intrenched in their political life as the principles of the Magna Charta. Few books on English political methods of government, whether by English or American authors, speak of the election address at all, or, if they do, mention it in the most casual way, as if it were something nearly as well known as the Bible. The latest and most exhaustive thesaurus of information on English government, "*The Government of England*," by A. Lawrence Lowell, president of Harvard University, seems to contain no mention or description of it, even in the chapter on "Candidates and Elections," where he speaks of the candidate's pledges.

The only passage of any importance upon the subject yet discovered is the following paragraph from "*The Working Constitution of the United Kingdom*," by Lord Courtney, page 164:

Every candidate for the election issues an address to his own constituency containing, with more or less amplification, the grounds on which he makes his appeal; and the addresses of the leaders, who sit in the House of Commons, supply the main subjects of contention, with some indication of the order of their importance. These addresses are issued the moment the time of the General Election is determined, and the addresses of followers reproduce their leading features with the addition of declarations of loyalty to the party chief. Up to a comparatively recent time, the questions at issue were rarely expressed in a definite manner except in these addresses.

It may, therefore, be of interest and profit to American readers to describe, illustrate and discuss this method of influencing public opinion, which every Englishman makes use of when he desires the right to place the coveted initials M.P. after his name.

The election address is in essence the political creed of the aspiring candidate, and the pledge of his future action to his constituents with regard to the burning questions of the hour. In it a candidate is expected to put himself implicitly on record respecting the important questions that confront the nation for settlement, and to state what would be his general position should they come before the House of Commons in the form of a legal proposition on which he must vote. It is usually a four-page pamphlet of quarto or octavo size, printed in plain type. In some cases, the resources of highly colored and ornate lithography are brought into use, as was done in that of the elegant young Tory from the wealthy district of Belgravia in London, who crossed the Thames in the last election but one, to fight the Right Honorable John Burns, in the working-class borough of



Battersea, where the president of the Local Government Board has always lived and which he has represented in Parliament for eighteen years. The pamphlets are mailed or distributed to the voters of the electoral district, and are often accompanied by portraits of the candidate and his wife, printed on better paper. The election address is reprinted in part or whole in the party papers of the locality, and the largest publicity is given it. Apparently no English constituency would tolerate long the custom which occasionally is found in the United States, where a candidate is accustomed to point to the regular party platform and say, "Those are my sentiments." There is expected in England a frank unbosoming of the candidate's convictions upon a wide range of political questions. If he does not in his election address state his belief on any important question, he is likely, when he gets upon the hustings, to be heckled unmercifully until he does declare it. The sphinx-like position of some American politicians, who find the top rail of the fence more alluring and attractive as a resting-place than the ground on either side, would soon be swept away by the fierce blast of an English campaign.

The particular character of the election address varies both in matter and manner, in accordance with the disposition of the candidate and the intensity of the campaign. It may be strictly formal in its character, in campaigns without excitement simply expressing the desire of the candidate for the votes of his constituency. Such was the one given in full by Boswell in his life of Johnson, which his hero and idol had written for Mr. Henry Thrale, in 1780, when this member of Parliament was wooing the electors of Southwark for reëlection. Probably few of that sort appeared in the last election but one, when the excitement was at fever heat. In general it may be said that no candidate of any prominence, who had sat on the front bench of Her Majesty's Ministry or of the Opposition, or even held a minor office under the Government, would issue an election address to his constituents without declaring his position on some of the important questions of the day.

If one studies Mr. Gladstone's series of addresses, covering a period of sixty years, from the time when he appeared as the

Duke of Newcastle's Tory candidate for Newark down to the last triumphant Midlothian campaign, it is most interesting to see how steadily, gradually, and normally, his noble and sympathetic nature rises under the spur of conscience out of the narrow and bigoted prejudices of Toryism, with its indifference to the rights of the many, into the broad, generous, and altruistic spirit of Liberalism.

But the election address is more than simply a political confession of faith. On two or three of the most important questions, which at the time divide parties, it comprises a pithy brief of arguments for the candidate's position and a rebuttal of the arguments and claims of his political opponents. It is the case for either side put in a nutshell. There often results, especially in the case of the leaders, a kind of intellectual duel in print, which makes a good debate so fascinating a form of intellectual enjoyment. The election of November, 1868, is a case in point. Disraeli was Tory Prime Minister, with a following in the House of Commons so weak that the resolutions for the disestablishment of the Irish Church were carried against him, but the House of Lords, which Mr. Chamberlain in 1885 called very properly "the obsequious handmaid of the Tory party," threw out the resolutions and thus brought about a dissolution. Disestablishment for Ireland then was the great question at issue in this election. Mr. Disraeli, in his election address to the Buckinghamshire electors, charged that the Pope was promoting the movement for the disestablishment of the Irish Church in order to promote the selfish interests of the Roman Catholic Church in the following words:

Amid the discordant activity of many factions there moves the supreme purpose of one power. The philosopher may flatter himself he is advancing the cause of enlightened progress; the sectarian may be roused to exertion by anticipations of the downfall of ecclesiastical systems. These are transient efforts, vain and passing aspirations. The ultimate triumph, were our church to fall, would be to that power which would substitute for the authority of our Sovereign the supremacy of a foreign prince.

To this Mr. Gladstone, in his address to the electors of South-West Lancashire, replied in the following powerful fashion:

The Church of Ireland is the church of a minority, insignificant in numbers. True, while insignificant in numbers, that minority is great in property, in education, and power. All this does not mend but aggravate the case; for if a national church be not the church of the nation, it should at least be the church of the poor. Every argument which can now be



used in favor of civil establishments of religion is a satire on the existence of the church in Ireland. But while that establishment is thus negative for good it misapplies the funds meant for the advantage of the nation at large. It remains as the memorial of every past mischief and oppression; it embitters religious controversy by infusing into it the sense of political injustice; and it carries the polemical temper into the sphere of social life and public affairs. Nor need we feel surprise that we find that since the penal laws began to be repealed, the relative number of Protestants in Ireland appears to have declined.

In the removal of this establishment I see the discharge of a debt of civil justice, the disappearance of a national, almost a world-wide reproach, a condition indispensable to the success of every effort to secure the peace and contentment of the country; finally relief to a devoted clergy from a false position, cramped and beset by hopeless prejudice, and the opening of a freer career for the sacred ministry.

One of the most effective examples of rebuttal by Mr. Gladstone on such occasions occurs in his first election address to the electors of Midlothian in March, 1880. For thirty years the Tories of England have been accustomed to plume themselves on being the real patriots, while their Liberal opponents are endeavoring to destroy the nation by disunion. In 1885 they proudly adopted the title of Unionists, because they opposed Home Rule, knowing well how effective with shallow minds a false and misleading epithet is, while they called the supporters of Home Rule, Separatists and Disunionists. These misleading titles they still try to galvanize into some semblance of truth. This keynote Disraeli sounded for them, in the opening of the campaign of 1880, in the veiled and mystical language which that political sphinx enjoyed. He had now entered the House of Lords as Lord Beaconsfield, and his election address, in the form of a letter to the Duke of Marlborough, then lord lieutenant of Ireland, was a general address to the country, and not an address to a particular constituency. In speaking of the Liberals he said:

Having attempted and failed to enfeeble our colonies by their policy of decomposition, they may perhaps now recognise in the disintegration of the United Kingdom a mode which will not only accomplish but precipitate their purpose. . . . Rarely in this century has there been an occasion more critical. The power of England and the peace of Europe will largely depend upon the verdict of the country.

Mr. Gladstone, the leader of the Opposition, struck back straight from the shoulder in the following words of his election address to the Scotch constituency of Midlothian, which includes a part of Edinburgh with outlying suburbs:

In the election address, which the Prime Minister has issued, an attempt is made to work upon your fears by dark allusions to the repeal of the Union and the abandonment of the colonies. Gentlemen, those who

endangered the Union with Ireland were the party that maintained there an alien church, and unjust land law, and franchises inferior to our own; and the true supporters of the Union are those who firmly uphold the supreme authority of Parliament, but exercise that authority to bind the three nations by the indissoluble tie of liberal and equal laws. As to the colonies, Liberal administrations set free their trade with all the world, gave them popular and responsible government, undertook to defend Canada with the whole strength of the empire and organised the great scheme for uniting the several settlements of British North America into one dominion, to which, when we quitted office in 1866, it only remained for our successors to ask the ready assent of Parliament. It is by these measures that the colonies have been bound in affection to the empire, and the authors of them can afford to smile at baseless insinuations. Gentlemen, the true purpose of those terrifying insinuations is to hide from view the acts of the ministry, and their effect upon the character and condition of the country.

Then he drops the defensive attitude, and assuming the aggressive, proceeds to hammer in his conception of what those discreditable acts of the expiring Ministry were:

At home the ministers have neglected legislation, aggravated the public distress by continual shocks to confidence which is the life of enterprise, augmented the public expenditure and taxation for purposes not merely unnecessary but mischievous, and plunged the finances which were handed over to them in a state of singular prosperity into a series of deficits unexampled in modern times. . . . Abroad, they have strained, if they have not endangered, the Prerogative by gross misuse; have weakened the Empire by needless wars, unprofitable extensions, and unwise engagements; and have dishonoured it in the eyes of Europe by filching the island of Cyprus from the Porte under a treaty clandestinely concluded in violation of the Treaty of Paris, which formed part of the international law of Christendom.

While it is customary for the Prime Minister to briefly discuss several burning questions of the day, it sometimes happens, when there is one which he considers of transcendent importance, that he may devote almost the whole of his election address to the discussion of that matter. Such was the case in the Budget campaign and election. Mr. Asquith in January, 1910, in his address to the Scotch borough of East Fife, which he has always represented since he entered Parliament in 1886, dwelt almost entirely on the abolition of the financial veto of the House of Lords and the limitation of its legislative veto as the dominating and crucial question of the campaign.

As further illustrations of the importance and interest of the election address in British politics, there will be presented in part three characteristic election addresses, issued during the Budget campaign of 1909-1910 by prominent members of different parties, which will enable the reader to judge for himself of the character, purpose, and literary form of these documents. These documents will be supplemented by brief biographies of the politi-



cal careers of their authors, a description of the constituencies to which they were addressed, and brief comment upon the matter of the documents.

The first is that of the Right Honorable John Burns, President of the Local Government Board, which was addressed to the electors of the Battersea division of Clapham, one of the London parliamentary boroughs on the Surrey side of the Thames. Mr. Burns is one of the most interesting and able men in English political life. A son of a workman, left fatherless before he was ten, he began a life of toil at twelve years of age. This life he has described in his own words as follows: "I came into the world with a struggle, struggled long, am struggling now, and seem likely to continue it to the end." His education since that time has been due his own untiring efforts, in what Carlyle has called "the university of books." He is by trade a machinist, or engineer, as the trade is called in England. It is said that while practicing his trade on the Delta of the Niger, he picked up a tattered copy of Adam Smith's "Wealth of Nations," and the reading of this powerfully influenced him to devote himself to the agitation of questions of political and social reform. He was a member from Battersea of the London County Council from its organisation in 1889 to 1907, when he had become a member of the British Cabinet, the first workingman in the history of England to reach that high office. He has represented Battersea in the House of Commons since 1902.

His first great achievement was his leadership of the London Dockers' Strike in 1889, in which Mr. Herbert Paul says in his "History of Modern England," "he displayed all the qualities of a statesman in the guidance of this gigantic movement." He is a powerful orator, of a rugged, sledge-hammer style, with a diction that teems with striking metaphor, and is famous for his pithy phrases and epigrams. For the fearlessness with which he utters his own convictions, even when in a small minority, he was long ago called "Honest John Burns." While his reputation as an orator, agitator, and legislator was long ago assured, it was not till December, 1905, when he was appointed president of the Local Government Board, that the test of his mettle as the administrator of a great government department came. On

this point the testimony of Prime Minister Asquith is sufficient. In debate in the House of Commons, in June, 1910, on the motion to make his salary the same as that of the other Secretaries of State, viz. \$25,000, Mr. Asquith said:

My right honourable friend has had to undergo severe criticism, but I do not think that even his severest critics would contend that any man who had ever held that post had devoted to it more assiduity or performed the duties with more single-minded devotion. (Cheers.) The State has no more devoted and admirable servant than Mr. Burns.

In November, 1910, this man who left school at the age of ten, received the degree of LL.D. from Liverpool University in company with Lord Rosebery and Lord Morley.

In illustrating the character of the election address by actual specimens of the documents issued by representative candidates, it would be more just to the candidate to publish the address entire, but the limits of space prevent this. The specimen extracts which are selected for illustration will usually be limited to their discussion of the three most important questions of the campaign, viz., (1) the justice of the new taxes imposed by the Budget of 1909, (2) the right of the House of Lords to reject a budget, duly passed by the House of Commons (which it had not done in nearly three centuries), (3) Free Trade versus Protection.

For the benefit of American readers, it should be said that the land clauses of the Budget, which were the reason for its rejection by the House of Lords, simply applied principles of taxation which in the main have been the statute law of the United States and Canada for a century or more. Until 1910 there had been no general valuation of land in Great Britain since 1696. The Budget provided for such official general valuation of all land at its capital value, and imposed on all land not covered with buildings, except agricultural land not worth more than \$250 an acre, a tax of two mills on the dollar.<sup>1</sup>

In the opening paragraphs of his address, Mr. Burns dwells on the achievements of the Liberal Government and the unconstitutional action of the House of Lords in the following words:

I rejoice that Battersea, which at the time of the Boer War voiced the nation's conscience in its demand for justice to the South African colonies,

<sup>1</sup> The Budget was fully described in the *YALE REVIEW* for February, 1910.



should have had its direct reward and helping hand in assisting to secure colonial peace and at the same time should have terminated industrial servitude for the yellow races, who till recently have worked in the mines. The magnanimous concession of free Parliamentary institutions to the two colonies and the granting of the great Act of federal union to a united South Africa are worthy of the best traditions of the British Parliament, and in keeping with the underlying sentiment of a great people and a just democracy.

The navy, costing much more than the German and French navies combined, without boasting or provocative parade, has been strengthened in its vital and essential parts, is efficient and sufficient for its purpose, while the economies that have been effected on obsolete and costly branches of the service have been diverted to and utilized for the purpose of capital, ships, and personnel.

In the region of social reform there has never been so much attempted, so much achieved in so short a time. This persistence in well-doing for the people has given reaction the greatest offence. The failures of the Government are the faults of the Peers. The successes of the Ministry belong to the Government and the Commons alone. But for a vindictive House of Lords, the best parliament of this century would have added to its fruitful record of good and useful acts the crowning triumph of having settled education, licensing, and land valuation on progressive and equitable terms.

By a revival and reckless abuse of their timeworn and obsolete powers the non-elective, hereditary and irresponsible House of Lords have rejected the budget of the elected Commons House of Parliament. Apart from the financial injustice of such an intolerable and unprecedented act, the constitutional relations between the three estates of the realm have been suddenly and without warrant violated. At the end of an exhausting session after the work of the budget had been completed, and the taxes had been levied the Lords did by violence what they could not do by right, and caused the Commons to seek a fresh mandate from the people in a matter wholly within their constitutional rights. It would be impossible that the people could submit to such a political disability, as would be imposed upon their own House of Commons by this invasion of their ancient hard-won rights and privileges. The people who elect, who must pay, and who alone ought to decide how they should be taxed, must not submit to the domination of a House of Lords, representative only of themselves. The submission to this attempt to override and defeat the will of the People's Parliament would transfer from the electors to 600 peers the vital and decisive powers and rights involved in the government, taxation and defence of 45,000,000 people.

The hegemony of Great Britain as the central figure of a federation of English-speaking communities and the solidarity of the Empire ought not to be subjected even to the slightest risk of being disturbed or threatened because the Lords do not like a half-penny in the pound tax on their undeveloped land. The real and only reason for their rejection of the Government's financial proposals is that their estates should secure that immunity from taxation which a uniform and universally applicable system of valuation must yield. The extent to which they dislike the Budget valuation is the measure of their past exemption under the present law. Their dislike of its application to their property is a proof that class, personal, or selfish reasons have biased their judgment or corrupted their sense of duty to the State, and also a proof that they do not bear their fair share of contribution to the State, for burdens that in the old days rested on land, and to which improved land does not to-day contribute according to its value.

I am, as ever, a convinced Free Trader. I am in favor of abundance, not scarcity. I believe that a great industrial people must range the world for all that it requires for the maintenance of its growing and world-wide commerce. Our industrial supremacy rests entirely on our universal choice and supply of products from all parts of the world. You cannot make everybody richer by making everything dearer. To tax the food of the very poor as an excuse for letting the rich escape from their obligations is neither sound

finance nor good social policy. Free Trade has made this island the clearing house for commerce, the turntable of British and European trade. London is the banking, insurance, brokerage, and exchange centre of the world. Tariffs, however small, would diminish this boon. As a London member I must, apart from politics, and as a safeguard for the £200,000,000 of its trade, strenuously resist any attempt to interfere with that freedom of exchange which has made London the emporium of the world.

The veto of the Lords must go.

I am in favor of:

Such legislative independence for Ireland, in Irish affairs, as will enable that country to revive her industries, maintain her population, and stimulate her social and agrarian prosperity in accordance with Irish ideas. The imperial supremacy of the Federal British Parliament in imperial matters affecting all sections of the United Kingdom is to remain inviolate.

I also favor, payment of members of parliament; and of election expenses; adult suffrage for men and women; shorter parliaments, so as to maintain a closer touch with the wishes and sentiments of the electorate, and electoral reform; amendment of the Education Acts in the direction of extending our present system of technical, higher, and secondary schools, and thus restricting the production and perpetuation of the unskilled and unfit; an eight-hours day to secure more regular work for more workers, and to diminish the evils of overtime and casual labour; raising the age of child labour, and a further extension of the Factory Acts; more stringent control of the liquor traffic in the interest of the individual and of the nation.

To one who is familiar with Mr. Burns's former election addresses, when he was a candidate either for Parliament or the London County Council, the two dominant notes of this address are fearlessness and consistency. For the last twenty years he has been an advocate of Home Rule for Ireland, safeguarded by the imperial supremacy of Parliament in national and imperial affairs. When the Liberals were in opposition, his seat was below the gangway on the left of the speaker, next to the famous corner where Mr. John Redmond, the Irish leader, has so skillfully directed the action of the Irish parliamentary party.

A teetotaler himself, he has always been a fierce opponent of the liquor distillers, brewers and retailers, both of their dominance under Tory administrations in Parliament and their debauchery of the working classes of Great Britain through the public house, commonly known as the saloon in the United States. Intemperance is one of the greatest curses of Great Britain to-day, and the liquor traffic, known as The Trade in England, finds its chief support in blocking the progress of reform among the wealthy, titled, and landed classes of the country. Mr. Burns's famous pamphlet, "Labour and Drink," is one of the most powerful arraignments of this national curse that has been issued for many years.



In striking contrast to Mr. Burns, both as to his career and political ideas, is the Englishman from whose election address extracts will now be chosen, viz., the Right Honorable Arthur J. Balfour, formerly Prime Minister, and now the Conservative leader of His Majesty's Opposition. The poverty and lack of opportunity which were the lot of Mr. Burns's boyhood were conspicuously absent in the life of Mr. Balfour. The one got what education he could in the university of books. The other passed the golden hours of youth at the royal school of Eton, passing on to Trinity College, Cambridge, where he took his first degree in 1870.

He is a descendant of Lord Burleigh, Secretary of State under Queen Elizabeth, and nephew of the third Marquess of Salisbury, whom he succeeded as Prime Minister in 1902. He was M.P. for Hertford from 1874 to 1885. From that time he represented the East division of Manchester in the House of Commons in five successive Parliaments, until the tidal wave of January, 1906, swept him out of office and out of the House of Commons. A safe seat was soon obtained for him in the City of London through the resignation of one of its members, and he will doubtless represent that constituency until he retires from public life. This constituency comprises the area, one mile square, in the heart of modern London, to which King Henry I granted a charter. Its estimated day population is 300,000, and its night population 40,000. Yet, owing to the antiquated system of plural voting which prevails in England, there are 31,000 registered electors in this constituency entitled to cast a ballot. It is unquestionably the wealthiest constituency in Great Britain, for it is the monetary center of the world, and every man who owns property or rents property at a weekly rent of not less than \$1.00 within a radius of an eighth of a mile from the Bank of England has the rights of a parliamentary elector.

Mr. Balfour is a man of large inherited wealth, and keenly interested in philosophy, literature and music. His charming personality is said to captivate his political opponents, and yet this personality is thought to be a very serious drawback to his success as a political leader in the twentieth century, for the

atmosphere of adulation and admiration of his political followers with which he is surrounded keeps him out of touch with the seething, yeasty movement for social reform that leavens the middle and working classes of England. A keen observer of political affairs in England has said of him that when he became Prime Minister he had the greatest opportunity that had fallen to an English statesman in two generations. The Boer war had left the English people sober and serious, ready to follow a wise leader in the path of reform who would show them how to put their house in order. But he frittered away the opportunity. Listlessness and lack of earnest leadership steadily wore down the large Tory majority, won in the Khaki election of 1906, until Mr. Joseph Chamberlain, then his towering rival in Tory hearts, drove him from office by his Bristol speech November 21, 1905. In advocating the cause of a protective tariff for England Mr. Chamberlain said: "You must not suffer it to be whittled down by the timid or the half-hearted minority of our party. . . . No army was ever successfully led to battle on the principle that the lamest man should govern the march." The election of January, 1906, which followed the assumption of power by the Liberals in December, 1905, resulted in the greatest political reverse ever suffered by a Prime Minister in the annals of English politics. When the new Parliament opened, Mr. Balfour was "left outside the breastworks." He could not for a time lead the small cohort of 150 Conservatives which sparsely filled the benches on the left of the Speaker, except from outside the House of Commons, while the triumphant Liberals faced them with a majority of 354, the largest parliamentary majority known in England since the first Parliament after the Reform Bill.

To some persons, not under the spell of Mr. Balfour's personality, his methods of reasoning and his style of public utterance leave much to be desired. In direct, straightforward reasoning and in positive utterance he is at the opposite pole from Mr. John Burns or Mr. Winston Churchill. The sinuosity of Mr. Balfour's reasoning can well be illustrated by four quotations, uttered in four successive years by him on the rights of the House of Lords with regard to the taxation of the people.



In the House of Commons, June 24, 1907, he said:

We all know that the power of the House of Lords, thus limited . . . in the sphere of legislation and administration, is still further limited by the fact that it cannot touch these money bills, which if it could deal with, no doubt, it could bring the whole executive machinery of the country to a standstill.<sup>2</sup>

At Dumfries, Scotland, October 6, 1908, he said:

It is the House of Commons, not the House of Lords, which settles uncontrolled our financial system.<sup>3</sup>

In September, 1909, when the fight over the budget was the fiercest, the Liberal Prime Minister, Mr. Asquith, went into the enemy's country and at Bingley Hall, Birmingham, he made a great speech, the burden of which was, "in finance the Commons are supreme." He quoted Mr. Balfour in support of this thesis, and called upon Mr. Balfour to declare whether he confirmed or repudiated his utterance of a twelvemonth before.

Five days later Mr. Balfour spoke in reply in the same hall, and this was the way in which he met the Prime Minister's challenge:

There are those who fill their speeches with constitutional antiquarianism on the subject of the House of Lords, or if they be of a different temperament, fill their speeches with the bluster of the political bully.<sup>4</sup>

One of the reasons why English politics is such a fascinating study is that for any notable utterance every public man is sooner or later brought to bay. Once more Mr. Balfour faced Mr. Asquith on this question, and then he could not dodge. It was in the House of Commons, with his political supporters behind him and his relentless opponents opposite.

On April 7, 1910, in the discussion of the resolutions with regard to the House of Lords, he said:

It never occurred to me (in making the statement in 1907) to suggest that there was anybody so ignorant in the House as to believe that the House of Lords could not throw out a money bill.<sup>5</sup>

He then goes on to give as a fair analogy to this, the example of a person stating that a district is a perfectly level plain, not denying, of course, that the land partakes of the general curvature of the earth's surface.

<sup>2</sup> Parliamentary Debates, 4th Series, Vol. 176, pp. 929-930.

<sup>3</sup> *London Times*, October 7, 1908, p. 12.

<sup>4</sup> *London Times*, September 23, 1909, p. 7.

<sup>5</sup> Parliamentary Debates, 5th Series, Vol. 16, pp. 650-651.

The proper reply to this came on the 12th of April from the lips of Mr. Winston Churchill, when he was discussing the inconsistency of Mr. Balfour on other points, in claiming that the proposed changes would at once make the House of Lords a more powerful body, and also bring upon England the danger of a single-chambered government. These were Mr. Churchill's words:

How that can be is utterly beyond my wit to imagine. I think it must be one of those occasions where the doctrine of curvature comes in, that delightful doctrine, which, when you say anything, or make a definite statement, always enables you to count upon finding knowledge and intelligence in your audience, so that they will believe the exact opposite—the doctrine that, when you say that it is the House of Commons and not the House of Lords which settles uncontrolled our financial system, the language is always supposed to recognise the fact that the House of Lords has absolute power to reject any and every budget and money bill, which comes within its purview.\*

Some of these characteristics of Mr. Balfour may possibly be confirmed by the following passages from his election address:

It is understood that Parliament will be dissolved early in 1910; and I shall then solicit the renewal of the confidence which you bestowed in such generous measure on me nearly four years ago. The immediate occasion of the dissolution is the resolution of the House of Lords that the country shall be consulted upon the budget proposals of 1909. The budget, therefore, is the subject primarily before the constituencies, and it might have been supposed that the alternative methods of raising the money necessary to meet the obligations of the Treasury would have been the topic most deeply interesting to Government apologists. For motives not difficult to conjecture this does not seem to be the case. It is not the merits of the budget about which they are concerned; it is that those merits should be submitted to the judgment of the people and (bitterest of all) submitted at the instance of the Upper House.

There may be good reasons for their irritation; but assuredly they are not reasons drawn either from the letter or the spirit of the British Constitution, nor are they based on those more general principles of government, common to representative institutions in the best types of modern democracy. The claim of the Government stripped of the bad history and bad law with which it is obscured is simplicity itself. They hold that the House of Commons, no matter how elected or when elected, no matter what its relation to public opinion at the moment, is to be the uncontrolled master of the fortunes of every class in the community, and that to the community itself, no appeal, even in the extremest cases, is to be allowed to lie. The question, be it noted, is not whether the Second Chamber may originate money bills, for that has never been claimed; nor whether they may amend money bills, for that has not been raised; nor whether they could resist the declared wishes of the people, for that has never been suggested. The questions raised are three—(1) May there not be occasions on which an appeal to the people on matters of finance is necessary? (2) Is not this one of them? (3) And if these questions be answered in the affirmative, does any other machinery exist for securing such an appeal, except that which has been set in motion by the House of Lords?

In the United States of America it is a fundamental principle of the Constitution that no kind of property shall be prejudiced by special taxation.

\* Parliamentary Debates, 5th Series, Vol. 16, pp. 1129-1130.



That Constitution is not easily changed, and before a measure like the British Budget could be legally attempted, the consent must be obtained of a two-thirds majority in both houses, nor could any such measure become law without a national mandate from a still stronger majority of the country. If we suggest the impossible, and imagine these constitutional safeguards withdrawn, would the American taxpayer even then be reduced to the precarious position of his British brother? Far from it. Special taxation might, indeed, be imposed by the House of Representatives, but it could be rejected by the Senate, it could be vetoed by the President. I do not ask that the British citizen should enjoy the same security for his property as the citizen of the United States. I only ask that if his property be subjected to exceptional taxation, by the caprice of a minister and his majority, he should not be deprived of the only methods known to our Constitution by which an appeal to his fellow countrymen may possibly be secured. . . .

The Government came into office, not to work the Constitution of the country, but to destroy it. They desire what is in effect a single chamber legislature. They desire that for all important purposes the constitution of Britain shall be as definitely a single chamber constitution as the constitution of Guatemala. The powers of the House of Commons are already great powers. In some respects they are, I believe, without example. But they do not satisfy the single chamber conspirators. And why? Because they wish the House of Commons to be independent, not merely of the Peers, but of the people.

Nor would there be grave objection to this if there was any security that the action of the elected embodied on all great and far-reaching issues the deliberate will of the electors. But there is not and cannot be any such security. It is only by a transparent convention that we can, for example, assume that a House of Commons returned on the cry of the Chinese slavery represents the mind of the nation on the question of socialism. . . . In any case the single chamber system is impossible. And it is as impossible in the region of finance as in any other. If finance meant in 1909 what it used to mean in earlier days, the question would be unimportant. But directly the need for money is used by a Government as an excuse for adopting the first installment of a socialistic budget, for treating property not according to its amount, but according to its origin, and for the vindictive attack on political opponents, then the people have a right to be consulted; and that right could never have been exercised, had the peers not used on behalf of the people the powers entrusted to them by the Constitution.

The well-informed reader will note Mr. Balfour's attempt to use a misstatement regarding the constitution of the United States as an argument against the budget, when the main feature of the budget, the taxation of land values, is the common practice throughout the States. Similarly he quotes the constitution of Guatemala as an argument against a single-chamber legislature, although Canada supplies the example of seven provinces which are successfully governed under the unicameral system. The reference to the elections of 1906 and 1909 leads the reader to suppose that the former was fought on the issue of Chinese slavery, the latter on that of socialism. Yet Chinese slavery was only one of the questions involved in 1906 and socialism is certainly not implied in the budget of 1909, unless the fiscal system of the United States can be called socialistic.

The last candidate from whose election address extracts will be printed is the Right Honorable Winston Churchill, at present Home Secretary. He is one of the most striking and picturesque figures in English politics at the present day. A descendant of John Churchill, who became Duke of Marlborough after the victory of Blenheim, and son of Lord Randolph Churchill, he was educated at Harrow School, and Sandhurst, the West Point of England. He was commissioned in the 4th Hussars at the age of twenty, and served first with the Spanish forces in Cuba, then with the Punjab Infantry in India, the 21st Lancers in Egypt, and the South African Light Horse in the Boer War. He charged with the Lancers at Omdurman, was present at the taking of Khartoum, at Spion Kop, and the capture of Pretoria. His parliamentary career began as Tory member for the manufacturing town of Oldham in 1900, when he was twenty-six years old. When Joseph Chamberlain forswore the convictions of a lifetime, and tossed the firebrand of Tariff Reform into the arena of English politics in May, 1903, Mr. Churchill accepted the challenge and has been the untiring champion of free trade ever since. June 8, 1904, he crossed the House and joined the Liberals in opposition. Mr. H. W. Lucy, known as "Toby, M.P." in *Punch*, predicted for him failure to win distinction in the Liberal ranks, but time has completely confuted that prophecy. He joined the new Liberal Government in December, 1905, captured the Tory stronghold of Manchester, North West, in the General Election of 1906, was sworn to the Privy Council in 1907, when he was only thirty-three years old, and made President of the Board of Trade, with membership in the Cabinet, in 1908. According to the English law, he had to go back to his constituents for reëlection, and the Tories, combining their fiercest efforts on the by-election, defeated him. A place was soon made for him in Dundee, a large manufacturing city of Scotland, and from this constituency he has twice been elected by huge majorities. He was appointed Home Secretary in February, 1910, at the age of thirty-six.

He is one of the most powerful debaters in the present House, and a very effective orator upon the stump. He may well be called the stormy petrel of contemporary English politics.



There were few more striking features of the Budget campaign than the series of speeches which he delivered in Lancashire, where the tariff reformers were putting forth every effort to seduce the voters from their free trade allegiance. During this busy life he has written ten books, the best known of which is his biography of his father, which has received high praise. His latest work, "Liberalism and the Social Problem," is a collection of his most brilliant speeches, and it is a very decided addition to the literature of forensic oratory. The man has something to say and he says it in a way that appeals to the intellect, the esthetic sense, and the heart. Wise choice of argument, logical and cogent reasoning, fair statement of his opponent's position, a keen, rapier-like thrust that punctures and confutes fallacies, combined with an admirable literary form make his speeches a model for the public orator to study and follow. Like Disraeli, he has a gift for pungent phrasing and pregnant, striking metaphor. His famous comment on the doctrine of taxing the foreigner, which the English tariff reformer rolls as a sweet morsel under his tongue, is an example:

There are some people who think that we can tax the foreigner, but I am quite sure that you do not expect me to waste your time in dealing with that gospel of quacks and that creed of gulls.

It was thought by some that Mr. Churchill's election address in the election of January, 1910, was the finest from a literary point of view of any that was issued. The following extracts will enable the reader to judge of its qualities:

The time has come to deal with the House of Lords. The absolute veto of a hereditary chamber of titled persons over all legislation passed by the elected representatives of the people in the House of Commons ought not to continue. The wrongful and unconstitutional claims of the nobility to control money matters, and dissolve Parliament, new and unheard of in British history, cannot be tolerated now. Unless the action of the House of Lords in destroying the budget, invading the rights of the Commons, and trenching upon the prerogative of the Crown is decisively repudiated by the electors, that partisan assembly of wealthy magnates will cease to be the tool of the Tory party, only to become the master of the state. No government will be able to maintain itself in power without securing the favour of a majority of peers; and this extraordinary authority will be exercised in permanence by an irremovable order and transmitted by them to their children generation after generation. To submit to such pretensions would be unworthy of free men. Judged by every test, our Constitution would have become less broad and free than that of France or the United States, and far below the level of the responsible and representative systems of Canada, Australia, and New Zealand. What have the people done to deserve this restraint? They have led the world in peace and war. They have taught all nations to fight for liberty. They have belted the globe with free institu-

tions. They have supplied the model and the example of representative government. As the years unfold, as civilisation expands, as the electors become more numerous, more educated, more prosperous, they should have more power, not less. They should elect at shorter intervals an increasingly powerful assembly. To fetter and enfeeble the House of Commons, and to exalt the control of the non-elected, hereditary House, is to degrade the franchise and to make every vote worth less than it was before. The plain man's whole political status depends upon his vote. By that vote he can at present choose the chamber that has wielded for hundreds of years the sole and undivided power over the public purse, and can thus choose, correct and change the executive government. If that power be wrested from the House of Commons, the vote may remain, but its virtue will be gone. It will hardly be worth while to ask seven millions of electors to vote for a House of Commons, that may talk as it pleases, but may not legislate or administer except at the pleasure and upon the sufferance of the heads of 600 families.

The House of Commons popularly elected is the only instrument that can, without hampering movement, prevent violent and furious collisions between different classes and interests, and thus assure at once the development and the stability of society. The people can be trusted. They are of age. They can act for themselves. There are many difficult problems ahead of us, and no doubt evil fortune as well as good lies in our path. But the electors of Great Britain have nothing to gain at this time of day from the guidance, governance, restraint, or control of the hereditary House of Lords. There is no hatred of the peers as peers, but as hereditary legislators armed with an arbitrary veto they will become increasingly the objects of public resentment; and it is high time to relieve them from functions and responsibilities which they can only exercise to their own and general detriment. . . .

A choice no whit less grave, and equally clear, awaits you upon finance. How ought the money to be raised which the State must have? Is it to be got from taxes upon bread, meat, and manufactures: or from luxuries, monopolies, and superfluities? Is it to be got on a free trade system or are we to revert to protection? I have often set out, and will again do so when I come among you, the commercial reasons why it is vital to British prosperity that we should keep our hands free to purchase whatever we want, wherever we choose in the markets of the whole world, and the social reasons why we should refuse to tax the staple food of the immense population crowded upon this small island. But it is upon the political dangers of protection (or tariff reform) that your attention should be fixed. Behind the tariff grow the trusts. You know full well, and to your cost, how tremendous is the power of the organized liquor trade. The whole forces of the State are scarcely able to cope with it. We are told that even 21 years' purchase is not sufficient to redeem a monopoly license, which the State has granted "for one year and no longer." What would be the effect upon the government of our country and upon the more or less unorganized mass of its citizens, if instead of one great trust which has extorted favours from the State, we were to be confronted with a score? Yet that will be the swift and certain consequence of a protective tariff. Every great industry will have to organize itself into a combination for political purposes. Every election will turn on tariff favours. Every member of Parliament will be forced to advocate the special trade interests of local industry, rather than the general interests of the commonwealth. The corruption of public life and public men, and the prostration of Parliament before the power of wealth, politically applied, will follow here as in other countries. Once given, tariff favours can hardly ever be recalled. The whole trade becomes dependent on the privilege it has secured. The savings of the nation are invested on the assumption, however unjustified, that such privilege will never be withdrawn. The widow and the orphan stake their mites upon the security artificially created. And the whole vast abuse—from millionaire organisers at the top to the most pitiful investor at the bottom—sits down deliberately to coax, wheedle, bully, and bribe new favours from the political caucus with whom it is allied.



The closest analogy to the British election address in this country is of course the national and state party platform, and the letter of acceptance of the nomination which the candidate may send. The difference between the two methods of appeal to the public results largely from the radical differences between the forms of government in the two countries. Executive officers as such in Great Britain are seldom directly elected. The government of England, both national and local, is simplicity itself, compared with the complex system of the American Federal State, with its additional ramifications of local government. In England the voter seldom has to vote at one time for more than one man, and then seldom more often than once in two or three years. The party caucus and the party convention, with all their demoralizing obliteration and sacrifice of individual convictions, are unknown there. The unit of political action and the size of the political constituency is much more limited, as the electoral area, except in the counties, seldom exceeds ten miles square. All this tends to individualism and individual responsibility in England, while in this country the system makes for collective action of party, subordinating the individual to the party, and lessening the sense of responsibility on his part to his constituency. The British election address typifies and strengthens this sense of responsibility.

The admirable English system by which any man can represent any constituency in Parliament makes the election address necessary and desirable. One not resident in the constituency, when he becomes a candidate, has a customary and direct method of explaining his political beliefs to the men whose votes he desires, and they have a definite standard by which they can test his future political action. The statements of the election address are probably more closely followed and more rigidly respected by candidates in England than is the party platform in this country.

There are many inquiries with regard to the election address which cannot be answered now. When did it begin as a custom, and where? How has it been affected in importance by the wide development of modern journalism, and especially by the growth of the regular periodical literature of the two parties, which has

been so marked in Great Britain during the last twenty years? What similar institution exists in the colonies of Great Britain, and in the countries of continental Europe? Such are some of the interesting questions that await further investigation. In this article the writer has simply endeavored to give a practical, graphic description of the custom as it exists in the Great Britain of to-day. Such a study will convince any careful observer of the truth of the following words of President Lowell, who says:

To the traveller, who cares for history, either of the past, or in the making, there is no place more interesting than the long sombre building with a tower at each end, that borders the Thames just above Westminster Bridge.'

GEORGE L. FOX.

New Haven, Conn.

'The Government of England, Vol. I, p. 248.



## BOOK REVIEWS.

*History of Labor Legislation in Iowa.* By E. H. Downey.  
Iowa City: The State Historical Society of Iowa, 1910—  
pp. x, 283.

This account of the labor legislation of Iowa shows that State tardily plodding along the paths already worn by other States with an earlier industrial development or a quicker public sensitiveness to the demands of legislation in behalf of wage-earners. It is the same old story. The steady emergence, with the growth of industry, of labor conditions calling for social adjustment; the prompt response of organized labor with efforts to that end; the stolid resistance of the pocketbooks affected; the slow awakening of a wider public consciousness to the needs of the new situation; and—strange recurring mystery in each case—the disregard of the experience of other governments in this field of public activity. The same crude legislative devices that others have tried and discarded are again written into law. Only by traversing the whole series does the State bring its policy concerning labor up to the best standard that experience has anywhere proven. Hence it is that, although Iowa's legislation touches all points in this field, there is nothing in this book calling for a reviewer's notice beyond the differences between this State's achievement and the well-known development under those governments which have gone furthest in the regulation of the conditions of labor.

In the matter of the State's shortcomings, one could make a considerable list of the points in respect to which Iowa still lags behind the best standards in nearly all departments of labor legislation. The only exception entertainable is the mining law. This situation may be explained in part by the later development of industrial life in the State, but not wholly. Whereas the mining law was begun in 1872, there was no comprehensive factory code until 1902, or any child labor legislation at all until 1906. Provision for the enforcement of such standards as are set is plainly inadequate to secure compliance against a studied

and determined opposition. The policy of the Commissioner of Labor also appears to have lacked sufficient firmness to make the laws truly effective.

Iowa has not taken many advanced positions, but a few deserve to be noted. It is a matter of interest that the first comprehensive mining law of 1884 was the result of a joint conference of the miners and operators (p. 36). Again, the law requiring biweekly payment of wages to miners, passed in 1894, "has stood unchallenged for fourteen years, and judgments awarded in accordance with its terms have been affirmed by the Supreme Court" (p. 71). In 1890 automatic couplers and power brakes were required to be used upon all railway cars in the State after the beginning of 1895 (p. 79). Although this law was not pressed, and although the time limit was extended to as late as 1900, and although the efforts of a single State in this direction could hardly succeed, the State deserves credit for leading off in the matter of such legislation. The imperfect child labor law excels in that it contains more than usually specific prohibition of using children under sixteen in dangerous employments; and it flatly prohibits the employment of girls under sixteen at work in which they are required to be kept standing (p. 137). The common law doctrine of employers' liability has had its usual development in Iowa, but some modifications of importance have been made. By a law of 1907, if an employer has been notified of the defective condition of any of his equipment, no employee can be held to have assumed the risk of injury by reason of his continuing at work (p. 166). The fellow-servant doctrine has received a much more liberal interpretation by the Iowa courts than is usual (pp. 167-171). In the case of railroads, from 1862 to 1873 was developed a law by which railroads are liable for injuries to employees resulting from neglect by the road's agents or by other employees (p. 172). This has been fully sustained by the courts. In 1898 an act made invalid the release clause in the membership contracts of railroad relief associations. This also has been sustained by the State Supreme Courts (p. 182).

The book is fairly well composed on the whole. Especially deserving of notice is the chapter on employers' liability. The



chapter on convict labor contains a good statement and discussion of the considerations involved in that question. The same is true of some other chapters, notably that on child labor. It is questionable, however, whether a book designed to record the experience of a particular State could not better take all such general principles for granted. These have been discussed so often that, unless the State in question has some peculiar situation with a new bearing on the problem, nothing is gained for the account in hand by the repetition, which becomes more and more wearisome, of well-known arguments. One could wish also that less of detail had been given in places, as in the chapter on mechanics' lien laws and in the names of persons concerned with legislation. These are not of general interest. Not enough space is given to the actual results of the laws. The reader, having seen that Iowa has gone only part way in legislating for her wage-earners, leaves the book with a rather indefinite and general notion as to just how much the administration of even these measures has effected. If the description of legislation is in places too detailed, the account of the results is too summary.

A misfortune in the publishing is the title on the back of the book. "History of Labor Legislation" would seem to pretend to a general account of the subject instead of one restricted to one State. The title page describes the contents of the book accurately.

ARTHUR SARGENT FIELD.

Dartmouth College.

*A History of California Labor Legislation.* With an Introductory Sketch of the San Francisco Labor Movement. By Lucile Eaves. University of California Publications in Economics, Vol. 2. Berkeley: The University Press, 1910—pp. xiv, 461. \$4.00.

California has never been lacking in dramatic materials: her acquisitions from Mexico, the gold days of '49, the vigilance committees, the railroad, the earthquake, etc., etc. Yet it has been far from a continuous performance of "legitimate" drama; unfortunately there has been a considerable sprinkling of cheap melodrama and *opera bouffe*. The industrial history of Califor-

nia has partaken of both sorts; and particularly that portion of industrial history dubbed "the labor movement." This is clearly brought out in Professor Lucile Eaves's study of California Labor Legislation, though the general conclusion of the book places the emphasis on the better, more creditable, more hopeful side. It is a pleasure in these days of industrial jealousies, misunderstandings, half-truths, and calculating partisanship—or what is worse, lukewarm neutrality—to meet a writer who, while frankly avowing her sympathy with organized labor, tells the truth, and tells it in a straightforward way. Miss Eaves is specially qualified for her undertaking. Her long acquaintance with San Francisco labor leaders, her frequent contributions to the *Labor Clarion*, her coöperation with the Labor Federation at several sessions of the legislature, all won for her the confidence of the labor men. Hence she was able to secure access to many original sources for materials: for example, an unpublished MSS. of Mr. Walter Macarthur, editor of the *Pacific Coast Seaman's Journal*, and one of the most respected labor leaders; also the minute books of the Typographical Union prior to their destruction in the fire of 1906. Mr. Macarthur, Mr. French, Mr. Furuseth and other prominent labor men were frequent visitors at South Park Settlement, which Miss Eaves directed for several years. Her work with Labor Commissioner Stafford, the gathering of materials for the drafting of the Child Labor Bill of 1905 in which she assisted, the direction of a busy Settlement in a lively union labor neighborhood, all these gave excellent opportunities for knowledge and use of the living document. Combining this wide experience with the critical attitude of the careful student and vigorous thinker, Miss Eaves has produced one of the most noteworthy books in recent industrial literature.

The work is particularly timely. The air is thick with moot questions and issues which only abundant, reliable evidence accepted in candor may hope to clear up. For example, the notorious San Francisco "graft" prosecutions, which brought the labor party into perhaps undue prominence. Again, the publication of Mrs. Coolidge's book on the Chinese and its stormy reception lightened up a none too savory corner of state and national politics and their connection with California labor policy,



of which the recent anti-Japanese school agitation in San Francisco, the operations of the Japanese-Korean Exclusion League, and the frequent Japanese "scares" emanating from the West are all too familiar survivals. The use or abuse of the injunction has been radical in California and evokes periodic storms of more or less intelligent protest. Employers' liability in California—as in Connecticut—is still an unfinished and unsatisfactory record. Finally, and most recently, the tragic blowing-up of General Otis's newspaper establishment in Los Angeles, together with other dynamite "outrages" in the same city, brings the whole labor question once more to the center of the stage. At this juncture come Miss Eaves's admirable study to throw light on all these questions and on many others as they have been dealt with on the Pacific Coast.

In going through the labor history of San Francisco, which occupies the first part of the book, what perhaps first strikes the reader is the early date and energy of the beginnings of labor activity; remarkable, too, the continuity of the labor movement in spite of its ups and downs, in reflecting general industrial conditions. These two phenomena taken together spell class-consciousness, highly developed among California workingmen. Yet withal, the movement has been throughout truly democratic. Western labor's opposition to the yellow man is a national truism, but it is not so generally known that the black man was also ill regarded in early days, and for similar reasons. The weather-cock decisions of certain early California judges, and the stupid persistence of legislators in reiterating illegal measures, can only be paralleled perhaps during the troublous day in the South. The political rôle of labor organizations has nowhere been better illustrated than in the history of San Francisco. Throughout their whole career they have never been a negligible factor in whatever mold their activity was cast, and at times they were actually dominant, yet nominally their principles expressly disclaim politics *qua* politics.

The remainder of the book is given over to a detailed analysis of labor legislation in California. The chief objects which such legislation has sought to promote are briefly (p. 440): (1) The prevention of race associations that were objectionable to

the working classes; (2) Protection from competitors who for one reason or another were able to work cheaply; (3) Wholesome conditions of labor, such as shorter work-days and sanitary surroundings; (4) Security for the payment of what is justly due; (5) The right of organized efforts to safeguard and promote the interests of the working classes.

As to the methods employed in the securing of this substantial body of legislation Miss Eaves concludes (p. 442): "In reviewing the California labor legislation, one is impressed with the absence of that paternalism which is so evident in European labor laws. The California wage-worker has sought the reform of abuses or a guarantee of just treatment rather than special privileges. With the self-reliance characteristic of the West, he has undertaken his own defense by an intelligent use of the ballot and by vigorous organized efforts. If unrestrained in his activities, it seems quite probable that he would be able to hold his own in any future controversies."

It remains only to say a word as to the practical value of this book. It should prove an instructive working manual for labor leaders as well as for students, social reformers, legislators, and the great, vague "general public." It should be a discourager to those half-baked schemes which the amateur in sociology seeks sometimes to foist upon a none too patient public. It should be no less encouraging to the believer in the ultimate victory of intelligent organization or organized intelligence, over selfishness, ignorance and arrant stupidity.

ARTHUR J. TODD.

Yale University.

*Sociology and Modern Social Problems.* By Charles A. Ellwood. New York: American Book Company, 1910—pp. 331. \$1.00.

Another sociologist has undertaken to provide a satisfactory elementary text-book in sociology. However skeptical one may be concerning the present feasibility of such an undertaking, the book before us is an addition to the list of available elementary texts. It introduces a different method of approach; it has in large measure the commendable feature of concreteness. The author devotes two chapters to a consideration of what is involved in the study of society and the bearing of the theory of



evolution upon social problems. The family is then selected as the primary social institution and its historical development is described in four chapters, to illustrate "more clearly the working of the biological and psychological forces which have brought about the evolution of human institutions." The problem of the modern family is treated in another chapter and the remaining chapters deal with the growth of population, the immigration problem, the negro problem, the problem of the city, poverty and pauperism, crime, socialism in the light of sociology, education and social progress.

As the author states, the book is intended for use in institutions where but a short time can be given to the subject and is also especially suited for use in University Extension Courses and in Teachers' Reading Circles. Many sociologists will therefore find the book useless for their purposes. Where this plan is followed in an introductory course of including a fairly detailed consideration of the family as a typical social institution, then an advanced and specialized course on the family can scarcely be given without considerable duplication, and yet it is a question whether sufficient attention has been given to this important subject in the introductory course. To a degree the same dilemma is presented in connection with the consideration of several of the specific social problems which the author discusses. In a college where sociology is given only a small place in the curriculum, however, and where it is desired to combine this subject with a study of current social problems, the book may be useful.

The position which the author takes on several important points is open to attack. Society is defined as meaning "scarcely more than the abstract term *association*" (p. 9) and may be "used scientifically to designate the reciprocal relations between individuals" (p. 7). The family, as an institution, is said to rest upon "certain fundamental instincts of human nature" (p. 75); its origin in promiscuity is rejected and "this primitive monogamy rested solely upon an instinctive basis" (p. 74), although in another place reference is made to the "polygynous instincts of man" (p. 97). It is then carefully explained that the various forms which the family has assumed are illustrations

of "variations in human institutions due partially to the influences of the environment, partially to the state of knowledge, and partially to many other causes as yet not well understood" (p. 78). The author has apparently fallen into the error, perhaps inadvertently, of assuming that the entire human race has gone through certain, definite stages of social evolution (pp. 81, 83, 85, etc.). It is also a little disconcerting to find that he has accepted at its face value Robert Hunter's estimate of the amount of poverty to be found in the United States (p. 243).<sup>1</sup> Very few slips of this character have been made, however. A brief but well-selected bibliography of books in English has been appended to each chapter.

The author is not a benighted optimist who in discussing practical social problems largely disregards numerous difficulties and present evils. His cautious, but convincingly well-founded, confidence in the future of human society, and of American society in particular, is stimulating.

J. E. CUTLER.

Western Reserve University.

*Organization, Correspondence, Transportation.* By Lee Gallo-way, George Burton Hotchkiss, and James Mavor. (Modern Business, Vol. II.) New York: Alexander Hamilton Institute, 1910—pp. xix, 494.

*Accounting Theory and Practice.* By Leo Greendlinger. (Modern Business, Vol. III.) New York: Alexander Hamilton Institute, 1910—pp. xix, 513.

*Corporation Finance.* By William H. Lough, Jr. (Modern Business, Vol. IV.) New York: Alexander Hamilton Institute, 1909—pp. xix, 480.

These three books are the second, third, and fourth volumes of a series of twelve, eventually to be published, covering the whole field of "modern business." The purpose of the series is to provide the means necessary for a complete course of instruction, through correspondence, for a large group of men outside the universities who wish to fit themselves for important positions in the modern business world. On the whole, the idea of

<sup>1</sup> The unsatisfactory nature of Mr. Hunter's work in this respect has been pointed out in the YALE REVIEW. See a review of Hunter's "Poverty," YALE REVIEW, May, 1905 (14:86-89).



the promoters of this set of publications seems to have been to organize, systematize, and clearly present in a practical manner a large body of widely scattered material rather than concentrate upon new investigations within the particular fields of the various authors. Considering the function which they are expected to perform and the specialized purpose for which they have been prepared, the particular volumes here under consideration are deserving of commendation.

The first volume in the series is entitled "Economics," and already it has been the object of comment in this journal. (See Vol. xix, No. 3, November, 1910.) The second has a triple authorship, as the title would indicate, and its various parts, written respectively by the authors mentioned above, are all intimately related to the general subject of "business structure and relations." Part I, which includes about one-half of the text proper, deals with business organization. Here are discussed, among other topics, the evolution of industrial society, the organization of the market and of the export business, trade-promoting institutions such as the consular service, and office systems and reports. Part II is concerned with the not easily acquired art of business correspondence, and there are numerous examples, introduced here and there, to illustrate the principles explained. Part III is given the rather inclusive title of "Transportation," but the author directs his efforts chiefly to a consideration of railroads. Although scarcely more than one hundred pages are included in the third part of the book, Professor Mavor has clearly and concisely presented a large number of representative and well-chosen topics.

Volume III, "Accounting Theory and Practice," adds another bulky text to the literature on this increasingly important subject. Its real nature is better described, perhaps, by its subtitle—"a comprehensive statement of accounting principles and methods, illustrated by modern forms and problems." The book is divided into five parts, dealing, respectively, with the principles of accounting, partnership affairs, corporation accounting, special topics (such as capital, revenue, depreciation, and insolvency), and problems and solutions. The mastery of this volume without the helpful suggestions and guidance of a per-

sonal instructor, would be no mean task for the type of student for whom it was especially prepared.

Volume IV seems to be, in many ways, the best of all those in the series which have come to the attention of the writer. In fact, it is to be classed as superior to most if not all other American text-books dealing with corporation finance. It promises to serve a useful purpose, other than that for which it was designed, in college classes in business economics. The opening chapters are largely introductory, and contain enough of corporation law as is required for a study of the financial organization of corporations. The author then proceeds to discuss the various sources of corporate funds, the methods of their assembling, and the credit instruments used in raising funds. He then takes up the function and operations of the promoter, drawing his leading illustration from the history of the United States Steel Corporation. The methods of selling securities by inside distribution, through Wall Street or some similar market, through established bond and brokerage houses, and by direct appeal to the public, are then considered. This is followed by an analysis of the problems of honest management and of the operations of corporation manipulators. The concluding chapters discuss the causes of insolvency and the principles of reorganization.

In each volume, at the close of the text, is a carefully prepared list of questions. These are arranged by chapters, and are based on the numbered sections of the text. The editorial work for the whole series is in the hands of Professor Joseph French Johnson, who is also the joint-author of a later volume, entitled "Money and Banking."

AVARD L. BISHOP.

Yale University.

*Kartelle und Trusts.* By Robert Liefmann. Second edition. Stuttgart: Ernst Heinrich Moritz, 1910—pp. 210. 2½ m.

The first edition of this work, published in 1905, having been exhausted, the author has taken the opportunity to completely revise and bring down to date his well-known treatise on *Kartelle und Trusts*. The first half of the second edition is devoted to a



discussion and classification of the forms of organization under which the various trusts operate, and the second half of the volume to a description of the American, German, and international trusts, concluding with a short discussion on the subject of legal regulation.

Dr. Liefmann is the author of one of the leading books on German trusts, "*Die Unternahmerverbände*," published in 1899, and has recently published a second contribution to the same general subject under the title "*Beteiligungs- und Finanzierungsgesellschaften*." In preparing these two books, Dr. Liefmann has not only used the literature, both books and periodicals, of all the leading countries, but has traveled widely and thus obtained part of his knowledge at first hand. He is thus exceptionally well qualified to write upon this particular subject, and his views are therefore of unusual public interest.

It is his opinion that the most important influence of the trusts in the United States is not in establishing and operating monopolistic enterprises, but rather in the work of promoting, financing and administering great consolidated corporations. While monopoly has been carried further in Germany, the administrative control of industry has been much more highly developed in the United States. The causes of this condition, in the author's opinion, are: first, the formation of large corporations; second, the absence of family industries; third, the favorable conditions of corporation law, and fourth, the establishment of exchanges by means of which shares are readily bought and sold, thus furnishing an easy method of purchasing control of any corporation. Thus, while the Germans have many companies engaged in each industry united into *Kartels*, by which prices are maintained and production controlled, the Americans have a few immense controlling corporations, each operating many plants, but none of them possessing a complete monopolistic control over the industry. The German *Kartel* is thus more democratic, while the American, although more autocratic, is much better able to effect economies in production and transportation. The consequence of this condition is that the Germans are beginning to adopt the American plan, and during the past few years many important consolidations have been effected in Germany through the use

of the American device of a holding corporation. In the formation of these holding corporations the German banks have played an important rôle.

Not the least interesting part of Dr. Liefmann's book is devoted to a discussion of international trusts and their future development. In this field, combinations and consolidations in the petroleum industry far surpass all others. It is the author's opinion that the international trust is to become of much greater importance in the near future than it has been in the past.

It is, of course, too much to expect that such a book as this should be free from errors. It is, however, a peculiar circumstance that most authors, including Dr. Liefmann, make a mistake in regard to the date of the passage of the New Jersey statute by which corporations were authorized to hold shares in other corporations. Some writers place the enactment of this statute in 1889. Dr. Liefmann gives the year as 1898. As a matter of fact the law in question was passed in 1893 (P. L. 1893, p. 301), one year after a similar law had been enacted by the New York legislature. In another case, the author is in serious error in attributing to Mr. Charles M. Schwab the promotion of the United States Ship Building Company. The evidence presented by Receiver Smith shows that John W. Young was the original promoter, and that Lewis Nixon was associated with Young long before Mr. Schwab became interested in the project.

Such errors as these are, however, of minor importance and are here mentioned merely to warn the reader against trusting too implicitly upon statements of this character.

MAURICE H. ROBINSON.

University of Illinois.

*Wool-growing and the Tariff. A Study in the Economic History of the United States.* By Chester Whitney Wright, Ph.D., Instructor in Political Economy in the University of Chicago. Harvard Economic Studies, Vol. V. Boston: Houghton, Mifflin Co., 1910—pp. xiii, 362, 4 charts. \$2. net.

This study, which received the David A. Wells prize at Harvard in 1908, is an admirable piece of work. Taking up the history of wool-growing and the woolen manufacture at the stage to



which Taussig had brought the subject in his *Tariff History*, the author has subjected to further analysis the questions involved, has extended his researches to ascertain the facts, and has set forth his conclusions with a clearness and a sobriety of judgment which command the reader's confidence and respect.

"If there is one truth brought out by this analysis of the history of wool-growing and its connection with the tariff which is of broader application and more fundamental importance than any other, it is that most economic problems are complex." This sentence, from the closing paragraphs of the book, is a profession more often on the lips of the writers of economic history than in their hearts. A man's book soon shows, however, whether the author has a living faith in this truth; and Dr. Wright's book testifies on every page to his devotion to it as a guiding principle. It has forced him to some arduous labor, for it has barred him from finding in the files of the Congressional Record, or in free trade and protectionist handbooks, the easy means of deciding disputed questions, and has sent him into many dry places in search of truth. The book will suffer in popular estimation on this account, for the writer has not done all he might to smooth and polish his raw material. The serious student, however, will scarcely notice the little roughness, and will be grateful for a scholarly contribution on an important and difficult topic.

The author traces the history of wool-growing through the nineteenth century, dividing its course into periods according with the changes in the industry; and in not one period does he find the tariff to have played a dominant part in the fortunes of the industry.

It has been in this country a frontier industry, following the westward movement of population, and has been affected far more by the competition of other branches of agriculture than by any schedules of the tariff. The author does not deny that the tariff has caused an increase in the number of sheep, especially since the Civil War, but believes the increase to have been relatively small; and prophesies a gradual decline of the wool-growing industry in the United States, from natural economic causes, in spite of the protection of tariff duties.

C. D.

*Public Ownership of Telephones on the Continent of Europe.*  
By A. N. Holcombe. Harvard Economic Studies, Vol. VI.  
Boston and New York: Houghton, Mifflin Co., 1911—pp. xx,  
482. \$2.00 net.

The growing recognition that in certain lines of industry the monopoly is the most efficient, indeed the inevitable, form of organization and that sooner or later we must in such cases choose between private monopoly under government regulation and public ownership, leads us to welcome every addition to our knowledge of the actual working of public industrial enterprises. Dr. Holcombe's book performs this service with regard to the public telephone systems of continental Europe. The largest place in the discussion is given to Germany (some 200 pages). Switzerland and France also receive extended treatment. The other countries are treated more briefly. It should be stated that Dr. Holcombe had already made a study of the telephone in Great Britain, publishing his results in the *Quarterly Journal of Economics* of November, 1906, and August, 1907. In the present volume the author gives for each of the principal countries an account of the origin and development of the telephone, of the agitation over rates and the development of rate policies, of the technical and legal conflicts between the telephone and the various other electrical enterprises that later entered the field, and of the labor situation in the telephone service.

Public ownership of the telephone business has always been the rule in Europe. Besides England, "the only European countries of importance in which the public authorities have not yet engaged in the telephone exchange business are Denmark and Spain" (p. 390). In Germany and Switzerland the whole industry has been in the hands of the government from the start. In other countries the authorities have allowed private interests to make the initial experiments, but as soon as the success of the undertaking was assured have taken over the whole or the greater part of the system. The one compelling reason for this has been the fact that the governments already owned the telegraph system, from its beginning a government monopoly for military reasons. The relation between the two services is so close that no country could maintain its telegraph system while leaving the telephone in private hands.



That serious difficulties are likely to arise out of the relation between the state and its army of employees is demonstrated by this history of the public telephone. The problem has varied between different countries, both in character and in seriousness, but it has arisen everywhere, and it has by no means been satisfactorily solved. In Germany, for example, the workman, as a condition of employment by the state, "must surrender not only his right to associate with his fellows for the purpose of mutual assistance in promoting their common interests as wage earners, but also his liberty to exercise the fundamental privileges of citizenship, the liberty of expressing his views on political questions, and of playing a part in the politics of his country" (p. 206). Obviously, as the author suggests, this condition cannot be regarded as a final solution of the problem.

In any discussion of the subject of government ownership a fundamental question is: what rates are being charged for the service and how do these rates compare with those charged by private enterprise? It is here that we find the present book somewhat disappointing. While the author has given a long account of the system of charges and the rate policies of the leading public telephone systems, he has purposely avoided any extended comparison of these rates, either among themselves or with the rates charged in the United States. Of course such comparisons are difficult, apt to be misleading, and capable of furnishing only rough general conclusions. Nevertheless we cannot help feeling that, with the knowledge at his disposal, the author might have presented some comparisons of rates which would have added to the interest and value of his work.

This book by no means solves the problem of the relative merits of government ownership and private enterprise. The author has limited himself to presenting the facts and has purposely avoided passing judgment on this question. The facts presented tend to show that on the whole the policy of government ownership has produced good results, especially good in Switzerland and Germany, decidedly less so in France. On the other hand, the presence of certain serious difficulties is evident. What the author has done is to furnish a careful history of the public telephone experience of Continental Europe, clearly and attrac-

tively written. In thus contributing out our knowledge of an important subject he has performed a valuable service.

F. R. F.

*A Traffic History of the Mississippi River System.* By Frank Haigh Dixon. (Document No. 11 of the National Waterways Commission.) Washington: Government Printing Office, 1909—pp. 70.

This little book is a valuable and interesting account of the rise and fall of the Mississippi river system as an important factor in American transportation. It is also one of the few sane books that have appeared on the subject of "Conservation" and is hence doubly worthy of attention.

Before the advent of regular steamboating on the Mississippi traffic went by barge or "keel boat." They floated down stream with the current; up stream they sailed, were poled or towed. The steamboat did not replace them until it had evolved its present form, so well adapted to the shallow rivers it had to navigate. Up to the time of the Civil War the exports of most of the country west of the Alleghanies were drained off to New Orleans by means of the magnificent system of waterways at the disposal of that port. Staples of commerce were corn, lard, bacon, whiskey, apples, potatoes, etc.—lumped under the name of "western produce," which supplied the southern plantations or were exported from New Orleans. The Southern States added cotton, tobacco and molasses to the down-stream trade. Planters in Alabama sent their cotton down the Tennessee river to the Ohio, down the Ohio and Mississippi to New Orleans. Foreign imports destined for Memphis were as likely to go over the mountains from New York to Pittsburg and down the rivers as they were to be imported via New Orleans. In 1860 New Orleans saw 3,500 river steamboats arrive, bringing goods to the value of 185 million dollars. New Orleans was accounted the fourth seaport of the world—after London, Liverpool and New York—and handled 26 per cent. of our exports.

The Erie Canal, the Pennsylvania Canal and the various Ohio canals drew eastward a part of the commerce which the Ohio valley had sent down stream, but it was the railroads which dealt the Mississippi its death blow. They appeared at first as



passenger carriers; in so far as they carried freight they acted as feeders and distributors for the waterways. Yet even before the Civil War they had begun to connect up their lines and draw off the commerce of the Middle West.

The war suspended commerce on the Mississippi, while the through railroad lines, north of the line of military operations, continued to extend their activities, got a firm hold on western exports and turned them once for all eastward. When the war ended, New Orleans found itself with a channel to the sea so shallow that large steamers could not get up to the city. The physical condition of the river and its tributaries was wretched. These two disadvantages have been remedied; the first completely, the second at least in part: there is plenty of water from New Orleans to St. Louis. Even this stretch of river is not used. Style of boats and methods of towage have not been modernized to equal those in other civilized countries. Terminal facilities have not been created to permit rail and water carrier working together. Above all, the railroads may charge one rate for working with the waterway, another and lower rate for working against it.

As one might expect of one of Mr. Dixon's special training, he sees the real problem—the relation of railways to waterways. Having seen the problem, he does not evaporate in ear-filling phrases, but makes the extraordinary choice of indicating definite remedies. Therefore his "Traffic History" is not only an entertaining record of the past, it is also a guide for the future.

E. J. CLAPP.

Yale University.

*A Documentary History of American Industrial Society: Volume IX, Labor Movement, 1860-1880.* Edited by John R. Commons and John B. Andrews. Cleveland: The Arthur H. Clark Company, 1910—pp. 378.

This volume opens with a relatively short section on "Labor Conditions," in which such questions as "Immigration," "Cost of Living," "Woman's Work," and "Employers' Associations" are taken up. The second section is the principal one, "The National Labor Union," and gives extracts from the proceedings of the Congresses from 1866 to 1872. The third section treats

of "Steward and the Hours of Labor," and the fourth section takes up "International Attempts."

The documents which are used in the different sections are well chosen and fit in to a well-thought-out treatment of the whole subject. In that respect the volume compares most favorably with its predecessors and it is possible to follow the development of the labor movement intelligently because of the excellent introduction to Volumes IX and X prepared by the editors. This introduction not only summarizes the contents of the two volumes, it also shows in a most satisfactory manner the connection with the preceding volumes of the series.

From 1860 to 1880 is preëminently the middleman-period. The building of railroads had greatly extended the markets and had likewise resulted in a wide separation of producers who were in general without capital and without sufficient credit. The merchant-jobber marketed both farm and factory products and performed a most useful service at this stage by furnishing through transportation over local lines of disconnected companies. It was only through the trade connections thus established that the producer was able to reach a market. Accordingly, the fundamental question for farmers and wage laborers after the Civil War was the control of capital and credit by middlemen.

Ira Steward would seem to have been responsible for the formulation in acceptable shape of the demand for an eight-hour laboring day. According to his doctrine the leisure thus afforded would raise the standard of living of the working class and by the standard of living wages would be ultimately determined. In 1866 the National Labor Union put this demand at the head of its programme and it has remained one of the most characteristic demands of American labor.

One satisfying feature of this volume is that the relations to one another of the various phases of the labor movement are clearly brought out and their connection with movements in other countries is shown: that the question of hours of labor corresponded to the radicalism of Europe of that time; that it was connected with the other characteristic doctrine of American labor developed in the land theories of Henry George; and that



the labor movement in this country was a part of a general movement of western civilization.

An interesting feature in the present volume is a series of portraits of some twenty leaders in the labor movement.

MAX FARRAND.

Yale University.

*The Frankpledge System.* By William Alfred Morris. (Harvard Historical Studies, Vol. XIV.) New York: Longmans, Green & Co., 1910—pp. 194.

Combined with a considerable amount of old information, stated in new form, we have here much that is new and important on the subject of frankpledge. The writer's aim, as expressed in his preface, is to emphasize those points of the frankpledge system which have not been brought out by other writers—its distribution, organization, functions, and decline. By far the greater portion of the work is taken up with a discussion of these special subjects, which are sometimes treated with a degree of detail hardly productive of results in proportion to its intensity. Considered as a whole, the book is a thorough treatment of a not inconsiderable part of the local government system of mediæval England.

As to the origin of frankpledge—a system of suretyship affecting practically the entire villain class in many sections of England—scholars have been divided in opinion, some believing it to have been an Anglo-Saxon institution, while others consider it to have had its rise under the Norman kings. Mr. Morris's theory is that after the Conquest the frequent secret assassinations of Normans by the Anglo-Saxons made it necessary for William I to devise some method of protecting his followers. He therefore made use of the idea of suretyship found in the old Saxon *borh* system, making it more stringent, and holding the whole hundred accountable for the misdeeds of its members. As time went on a progressive development took place, the completed frankpledge system belonging to the early Plantagenet period.

Most of the legal writers, and some of the chroniclers, in the period from Henry I to Edward I convey the impression that frankpledge was in force everywhere in England. Mr. Morris

devotes his second chapter to the "Distribution of Frankpledge," showing that in the period immediately after the Conquest frankpledge did exist in all counties to the south of Yorkshire and to the east of Cheshire, Shropshire, and Herefordshire, but that it was not in force in the northern and western border counties.

The frankpledge unit was the tithing, of which the number of members, nominally ten, appears to have varied considerably. At its head was the tithingman or *decennarius*. Chapter III is a review of the history of the tithing, its membership, duties, and obligations. "Maintained at first exclusively by the activity of a royal official, the tithing performed its duties in connection with the system of local courts and the sessions of the king's itinerant justices, and in some cases even in conjunction with the central courts at Westminster. By the thirteenth century, however, it was in many cases sustained by a manorial court, in which it came to discharge a large part of its ordinary duty."

Losing its old effectiveness in the thirteenth century, frankpledge as a surety system declined rapidly in the next hundred years. This decline was brought about by two main sets of causes: first, by the development of the manorial leet, and secondly, by new systems of enforcing peace observance. The supervision of frankpledge had been originally a special item of business at the Michaelmas session of the sheriff's turn. Gradually, however, the manorial court took over the view of frankpledge, and, as the sheriff's turn declined, the tithing had to do only with the court of the manor. Special commissions, quarterly sessions, new modes of gaol delivery, and in general, the employment of special officers rather than of tithing groups for preserving the peace, rendered more and more unnecessary the system of collective suretyship. Yet even after the disappearance of the surety element in frankpledge its forms continued to be observed, many survivals of the system being found in England as late as the nineteenth century.

The appendices ought to be noted, especially Appendix D. This, in connection with the discussion of sources in the preface, gives a good idea of the literature on the subject.

GEO. E. WOODBINE.

Yale University.



*The Roman Assemblies, from their Origin to the End of the Republic.* By George Willis Botsford. New York: The Macmillan Company, 1909—pp. x, 521.

The production of such a work as this is an achievement to be proud of. It is not only a solid contribution to our knowledge of Roman political institutions, but it bids fair to mark an epoch in the employment of method. It stands out as one of the most successful attempts as yet made,—and we may congratulate ourselves that it has been made by an American scholar,—to get clear of the traditions of respect which have hitherto bound students to the methods of Mommsen and the Germans. Whatever may be the final verdict on the soundness of Professor Botsford's conclusions, we cannot but feel that his methods of procedure are proper ones; that he has made a legitimate and judicious use of the historical and comparative method in forming hypotheses and in illustrating obscure points, and that he has exercised due and full caution in testing and substantiating every hypothesis by an extremely full citation of sources. It appalls one to think of the labor involved.

For the readers of this review, the most interesting point developed in Professor Botsford's book is one which is of importance not merely to the student of Roman history, but to those who are interested in the field of comparative political institutions and government,—and that is the constitution of the Roman *populus* and the relations of the *plebs* to the *patricians* in the assemblies. The old orthodox idea that *plebs* and *patricians* were separate political castes, meeting in exclusive assemblies at first, and becoming merged in *comitia* only as the result of long-continued strife, has been indirectly responsible for many theories of primitive government among other peoples than the Romans; Professor Botsford's attempt, undoubtedly successful, to show that from the beginning the two classes met together in the same assemblies, will have a correspondingly wide effect in modifying the theories or, at least, in causing an overhauling of the evidence, in the case of other nations. There are a number of chapters that will appeal to a much wider circle of readers than the book's title would seem to indicate, notably that on the social composition of the primitive *populus*, another on the auspices,

and the one on the comitia tributa and the rise of popular sovereignty.

E. L. DURFEE.

Yale University.

*Commercial Geography.* By Edward V. Robinson. New York: Rand, McNally & Co., 1910—pp. xlviii, 455.

This book bears witness to the idea that statistics are not enough if students are to understand in any vital way the nature and distribution of trade. Of his total text Professor Robinson devotes about seventy-five pages to the historical development of commerce, to the natural, human, and social forces upon which it depends, and to the development of transportation. The arrangement of materials is also calculated to bring out in no small degree the concrete cases of physical and other controls upon whose convincing quality the value of the present method must eventually rest. In other words, the book is built upon a reasonable and up-to-date basis. It seems to aim primarily at the high school—and so falls in a certain sense, out of the range of this REVIEW.

From the general standpoint, however, it is certain that if commercial geography is to have much educative value, wherever it may be taught, it must be pursued along lines such as those laid down in this volume. All criticisms must take into account the fact that an author who tries to organize the facts of trade, or of social life in general, about categories such as those before us, has little antecedent work to build upon save the rambling books of Ratzel. With this proviso, a general criticism would be that Professor Robinson has tried to cover too much, with the result of leaving sometimes the impression of haste and superficiality. Particularly would this militate, it would seem, to injure the book as a high-school text. If it confined itself to the skillful use of "samples"—which is all such a book can really do, as yet, without in some degree sacrificing its standpoint—it would assuredly leave a better conception of unity and stride than it does under the circumstances. But no treatments along these lines can at present satisfy their readers or authors, and the only thing to do is to make an earnest beginning and then alter and modify as occasion demands.



Professor Robinson realizes that the success of teaching commercial geography along new lines depends largely upon the teacher, and so adds to his book a separate pamphlet of exercises and references preceded by a sensible "Word to the Instructor."

A. G. K.

*Democracy and the Party System in the United States: a Study in Extra-Constitutional Government.* By M. Ostrogorski. New York: The Macmillan Company, 1910—pp. viii, 469. \$1.75 net.

When the larger work on party organization by M. Ostrogorski appeared eight years ago, the suggestion was made in the columns of the REVIEW that it could be much improved by careful revision and condensation. M. Ostrogorski has so far yielded to this commonly expressed wish that he has published under a new title a revised edition of the second volume, which treats of the organization of political parties in the United States. The new volume is somewhat more than a revision. While the historical treatment remains substantially unchanged, it has been improved by the excision of many of the repetitious phrases and diffuse paragraphs which marred the earlier volume. The judgments of the author are much fairer. As an example in point, we may cite the unqualified statement on page 367 of the original work, which reads: "The germ which produces the politician is the desire to obtain some public office or other." The new volume adds, "or, somewhat less frequently, to exert influence and power. Many simply like the 'game.' Aspirants of these last categories may be sometimes men of good standing" (p. 225). The added observation betokens a deeper insight into the springs of political life in the United States. Elsewhere we find reversals of judgment. In the original edition, the author says: "The boss who uses his influence solely for the good of the party, or even for the good of the people, the virtuous boss, must be relegated to the realm of romance" (p. 411). "Within these last years," writes M. Ostrogorski with commendable candor, "there have come forward prominent politicians who . . . used their power, more or less disinterestedly, for the public good" (p. 259). Again, M. Ostrogorski once said in the most dogmatic fashion:

"This domain of the Machine is daily growing larger. The Machine is gaining ground" (p. 423). To-day he observes: "The power of the Machine has weakened . . . . Slowly but certainly the Machine is undergoing a change" for the better. (p. 268).

In general the tone of the book is much more optimistic regarding the future of democracy, though the author still burns with implacable hatred for party. Party still seems to him a conspiracy of the designing few against the many. He is therefore impatient with all attempts at the "legalization" of parties. Government by party is an anachronism and a pretence. The existing party system is collapsing. "Down with parties" and "up with leagues" is still his cry. But to realize his ideal régime, M. Ostrogorski admits that certain incidental electoral reforms would have to be accomplished, such as a change in the tenure of office of United States representatives, the establishment of proportional representation, the restriction of the presidential tenure to a single seven-year term, the admission of cabinet members to Congress, the popular election of United States senators, the addition of associate senators representing great social and economic forces like manufacturers' associations, trades-unions, granges, and churches—the list fairly takes one's breath away.

Space does not permit an examination of M. Ostrogorski's panaceas for our political ills; but we are still of the opinion that he writes too much in the temper of an advocate. He utterly fails to observe some very important functions which party performs in a democracy, and he lays many crimes at the door of party which do not belong there. Much of the chapter on the rôle of the caucus in legislative assemblies is beside the mark, because the "organization" in many of our State legislatures is not controlled by the leaders of one party. It is rather, as Professor Reinsch has pointed out, bi-partisan in its composition, and operates through venal leaders of both parties irrespective of party affiliations.

ALLEN JOHNSON.

Yale University.



*Popular Law-Making.* By Frederic Jesup Stimson. New York: Charles Scribner's Sons, 1910—pp. xiv, 390.

The author describes his work in the sub-title as "a study of the origin, history, and present tendencies of law-making by statute." He tells us that his object was to give "an elemental, broad general view of the problems that confront legislation to-day. He seeks to cover both what has been accomplished by law-making in the past, and what is now being adopted or even proposed; . . . how far legislatures can cure the evils that confront the state or the individual, and what the future of American legislation is likely to be."

It requires only to state this object of the work in order to show that it can scarcely be attained in one small volume. The author reviews English and American statute law from Anglo-Saxon times to the present and he goes into detail. Such a review is bound to be a cursory one, but it does not prevent the author from passing a confident judgment upon a thousand legislative policies. The judgment is often open to question, and this volume does not and cannot undertake to give the reader the means of testing the judgment. Nevertheless, it is instructive merely to follow the author in his journey through the thousands of statute books and get a car-window view of what is going on.

Undoubtedly the author's review of modern statutes is better than is his review of early English legislation, and his knowledge of statute law is more accurate than his knowledge of the common law. The idea that the common law is not the creation of the bench and the bar, but that it is made by some unconscious process and the judges find it, leads the author into some error. He longs for the good old days when everyone "well knew the law as *familiar law*," a time when there must have been very little law to know and the average of intelligence very high. He says that "any good lawyer with common sense knows the common law and usage of the people," when in fact such knowledge requires the most accurate historical study. He defines slander as "the imputing of crime to a person by speech." As a remedy for false arrest, one may "sue criminally for trespass." Trial by jury "is probably an old Saxon institution." "The Roman law was always law more as we moderns think of it; it was an *order*,

addressed by the sovereign . . . to a subject." "So the Normans came over with the Roman notion as to what law was, that it was a written, newly made order of a sovereign." These and other matters lead us not to rely too confidently on the historical accuracy of the work, on early law or on the common law.

The references to tariff laws might be brought down to date. "Ohio, which is the home of the strong protection feeling;" "our present McKinley tariff." The author's opinion of tariffs is expressed in a reference to the action of Edward II, as follows: "All duties were then suspended, in order to know and be advised 'what Profit and Advantage will accrue to him and his People by ceasing the taking of those Customs'—a precedent it were wished we might have the intelligence to follow to-day—surely better than a tariff commission."

The analysis and arrangement of modern legislation are good. Probably the most useful part of the work is the review of legislation relating to labor and to combinations. The work closes with some very sound suggestions as to methods of drafting and publishing statutes.

ARTHUR L. CORBIN.

Yale University.

*Introduction to Political Science.* By James Wilford Garner. New York: American Book Company, 1910—pp. 616.

Text-books in political science are not yet so common that they may be passed over with perfunctory comment. The older concepts are undergoing so many transformations at the hands of students of the social sciences that a manual which records the changes faithfully and fairly is a welcome addition to the literature of political science. Theoretical treatises on political science have lost favor in recent years. Abstract generalizations concerning the best forms of government, interlarded with virtuous reflections upon the duties of citizenship, have given place to descriptive works relating to actual political processes. This empirical trend has been wholesome, yielding many notable concrete studies; yet if a political science be possible, these ascertained facts must be coördinated and systematized. The peculiar merit of Professor Garner's work lies in its close contact with



actual conditions in modern States. The generalizations rest firmly upon empirically ascertained data. There is a refreshing absence of formalism and dogmatism. Where mooted points arise, both sides are set forth and the reader is invited to form his own opinions. This method is particularly in evidence in the opening chapter, where many difficult questions of terminology and method occur.

The contents of the volume are well ordered. The nature of the State, its origin, attributes, forms, and functions, form the subject-matter of the first ten chapters. The remaining seven treat of citizenship and nationality, constitutions, the separation of powers, and the departments of government. Frequent quotations from French and German publicists give point to the author's statements and bear witness to his familiarity with the best literature. The book is made valuable, too, by the well-selected bibliographies prefixed to various chapters, as well as by the citations in the numerous footnotes. Professor Garner's work deserves hearty commendation and a wide use.

ALLEN JOHNSON.

Yale University.

*The Political Theories of Martin Luther.* By Luther Hess Waring. New York and London: G. P. Putnam's Sons, 1910—pp. vi, 293. \$1.50.

This is a convenient summary of all that Luther has uttered touching the field of politics, and largely in his own language. It has the advantages and the disadvantages of being the work of an obvious admirer of Luther: as an exposition and a compendium of facts, it is successful; as a history it is somewhat wanting in perspective and judgment. Luther, of course, drew many of the political consequences of his original religious position, slowly, as circumstances forced them upon him; but later thinkers have had to draw them anew. The current of political thought was not directly influenced by his political speculations except in one capital point,—namely, that the State has by divine right a sphere of its own in the world, independent of the Church, to which all men—priest, layman, and infidel—owe equal duty. In the matter of the reciprocal duties of princes to

the people, Luther's position was clear and in some points original, especially in regard to public education; but he had no other theory of the matter than common sense furnished him. And nowhere do we find in Luther a suspicion of the rights of individuals in matters of property, personal liberty, and civil justice. To present Luther (as does the author) as the founder of the theory of the modern state is thus historically absurd.

Dr. Waring throws light on the standing puzzle of Luther's political career—how this radical critic of external authority in things spiritual could so vigorously insist on external authority in things temporal, and so brutally condemn the revolting peasants of 1525. It was clear to Luther that his position, so far from involving the dissolution of social order, presupposed and strengthened it: much that he denied to the Vatican was denied in the interests of a united and sovereign Germany; it was the simplest necessity for him to repudiate an uprising whose motive, so far as he could see, was not conscience at all, but only pinched bellies and intolerable injustice. He was with the peasants in their claims, but not in their manner of asserting them, from which only destruction could result. Only organization may displace organization, and no merely negative burst of desperate human nature can be respected. This seems a reasonable account of Luther's position, and does much to save his consistency. But it renders the more conspicuous the error of saying that "Locke follows Luther's principle that public service is a trust that, when abused, may be revoked by those granting it" (p. 138). For that "those granting it" might in principle include these very peasants had never dawned on Luther's robust consciousness.

WILLIAM ERNEST HOCKING.

Yale University.

*Corruption in American Politics and Life.* By Robert C. Brooks. New York: Dodd, Mead & Co., 1910—pp. xv, 309.

This book is a very interesting and rather novel contribution to the literature on American public problems. It is an analytical and scientific discussion of the phenomena of corruption as they manifest themselves in every department of American life. Cor-



ruption is shown to be a pervasive and persistent evil, and it must be a rare man who can read the book thoughtfully and find himself wholly guiltless. This becomes evident when we note the author's definition of corruption as "the intentional misperformance or neglect of a recognized duty, or the unwarranted exercise of power, with the motive of gaining some advantage more or less directly personal." This definition is framed to include both of the two classes of corruption which the author distinguishes—bribery, where there is temptation and inducement from without, and auto-corruption, which arises solely with the individual.

In order to clear the way for his discussion of the subject as an evil, the author first of all takes up the current apologies for corruption, and on examination finds them all insufficient and untenable. He then proceeds with the general discussion of corruption in political and social life, in business relations and religious activities, in the professions, journalism and the higher education. There is a very careful consideration of the frequent accusations of corruption on the part of college professors, particularly those teaching the social sciences. While there is some ground for these attacks, it appears that they are much exaggerated, and in many cases wholly groundless. One chapter is devoted to the evils arising from the party system of the United States, campaign contributions and party support. It is pointed out, very pertinently, that these are in large part due to the anomalous situation of having unofficial organizations an essential and necessary factor in the conduct of an official election. The last chapter is devoted to an effort to determine the degree of our culpability in respect to corruption. The author admits the difficulties of the task, but denies that the frequent charges of corruption and the repeated exposures brand us as any more depraved than the citizens of European nations, where the apparent absence of corruption may be due to smaller opportunities, or to the fact that it is taken as a matter of course. The author believes that by education and the promulgation of wise preventive and corrective measures, the evils of corruption may be more and more suppressed.

HENRY PRATT FAIRCHILD.

Yale University.

*Europe Since 1815.* By Charles Downer Hazen. (American Historical Series.) New York: Henry Holt & Co., 1910—pp. xxiv, 830. \$3.00.

This volume is the first to appear of the series edited by Professor Haskins, which when complete will cover in eight volumes European history, ancient, mediæval and modern, and the United States. It is to be a series of text-books constructed with especial regard to American educational needs, giving due attention to economic and social conditions and to institutional development. With such an object in view, Professor Hazen has produced a useful book. Cast in a different and less severely scientific mould than Seignobos, it will doubtless prove more readable to the majority of students. On the other hand, it covers social and economic questions and matters of internal politics neglected by Fyffe's history of diplomatic and international affairs. The wide-spreading influence of the Metternich régime and the wars leading to Italian and German unity are fully treated; but in general, international questions are discussed only in their relation to the internal politics and institutions of each nation. The story is brought down to 1909, describing the Russian and Turkish revolutions, and there are chapters upon colonial expansion and its effect upon European economic conditions, the more valuable as this subject is untouched in the other important contemporary histories. The development of the British Empire is adequately treated and the importance of the Far East in its relation to Europe is duly recognized.

The book is bound to prove so useful that it is unfortunate that it is not a little better. A chapter upon Socialism in its international aspect and more space devoted to the rise of Labor parties might fairly have been expected, and the importance of the Catholic parties and the rise of Modernism has hardly received due recognition. The bibliography of thirty-six pages is obviously designed for the reader rather than for the serious student, being little more than a list of secondary works. No mention is made of the *Staats Archiv* or of Schulthess. For the Congress of Vienna, Pallain's *Correspondance inédite de Talleyrand* finds no place; nor does Garnier-Pagès amongst the authorities for the Revolution of 1848. Newspapers are not alluded to as



historical material and even such standard secondary works as Bernhardt's *Geschichte Russlands*, Levasseur's *Histoire des Classes Ouvrières* and the Marquardsen series are not mentioned.

The errors of detail, naturally to be expected in such a work, are infrequent. It is not true, however, that Armand Marrast belonged to the social-democratic coterie in the French Provisional government of 1848. Both Louis Blanc and Garnier-Pagès, from different points of view, bear witness to the contrary. The same mistake occurs in Alison Phillips and the unrevised edition of Seignobos.

CHARLES SEYMOUR.

Yale University.

*The Sermons, Epistles and Apocalypses of Israel's Prophets from the Beginning of the Assyrian Period to the End of the Maccabean Struggle.* With Maps and Chronological Charts. By Charles Foster Kent. New York: Charles Scribner's Sons, 1910—pp. xxv, 516. \$2.75 net.

This latest volume of the Student's Old Testament seeks to present the prophetic writings of the Old Testament in a form convenient for study. A brief but comprehensive Introduction traces the evolution of the prophet from the seer, and describes in detail the work of Israel's prophets in relation to the crises of the different periods of Hebrew history. There is also a careful literary analysis of the different prophetic writers which serves as a useful guide for those interested in the study of the Bible as literature. The conception of the prophet as a preacher rather than a mere predictor is consistently maintained throughout, and it ought to clarify the student's idea of the moral and religious teaching of these leaders of Hebrew thought to see their relation to the social, economic and political problems of their time. A commendable emphasis upon the development of the prophet from cruder forms, such as augurs, diviners, astrologers and necromancers, helps to give reality to the prophetic figure. The treatment of the Messianic ideal as inclusive of all the agents and agencies by which the destiny of the Hebrew nation was to be accomplished is in accord with the treatment of the prophet as a statesman.

The volume is admirably printed so as to present graphically the prose and poetic portions of the text, and the thread of the

argument is clearly indicated by marginal analyses. The notes are critical and practical, with initial sectional paragraphs giving in compact form the most reliable conclusions of scholars and many useful social and historical facts. Charts of contemporary chronology and an Appendix with a full bibliography are additional aids to the study of the prophets. This volume fosters the conclusion that the Student's Old Testament as a whole is a useful instrument for students of the Bible and should commend the sane results of scientific biblical investigation to all who understand the method of literary and historical criticism in other fields, or who are prepared to approach the study of the Bible with open mind.

ERNEST F. MCGREGOR.

Clinton, Conn.



## RECENT LITERATURE.

*Life and Health.* By James Frederick Rogers, M.D., Assistant Instructor in Physical Diagnosis, Yale University; author of "The Body at its Best," and other essays. Philadelphia and London: J. B. Lippincott Company, 1910—pp. 202. This book consists of two parts, entitled respectively "The Meaning of Health" and "The Maintenance of Health." The former traces the evolution of the human body from "our distant ancestor," who is described as "a bit of life-endowed, chemically unstable, gelatinous stuff, living in, and consisting chiefly of, water," and describes in a popular, readable style the functions and economy of our bodily organism. The second treats of the rules of hygiene, which are divided into two classes, according as they relate to the internal or the external conditions of health. Under the former are found such topics as cleanliness, appetite, poisons, breathing, etc.; under the latter, clothes, houses, heat and light, sexual hygiene, etc. The work is characterized by common sense, the absence of fads, and a frequent appeal to instinct and unperverted appetite.

*Social Insurance a Program of Social Reform,* The Kennedy Lectures for 1910. By Henry Rogers Seager, Professor of Political Economy in Columbia University. New York: The Macmillan Company, 1910—pp. 175. Starting with the assumption that the wage-earning population are not becoming more provident in their habits, and that changing industrial conditions are making saving more difficult rather than easier, Professor Seager examines in these lectures the problem of social legislation designed to provide against the most conspicuous evils of our modern economic life. These are accidents, illness, premature death, unemployment, and old age. Professor Seager takes advanced ground with regard to all of these subjects and presents an excellent survey of what has been done in Europe and Australasia with regard to them. The book does not pretend to be a critical examination of the topics discussed, but it is a very use-

ful introduction. As first steps in social advance, the author wisely indicates "political reform," "industrial education," and "a deepening of our social consciousness." He realizes that the enactment of laws is a slow process, which requires a long period of study and preparation.

*World Corporation.* By King Camp Gillette. Boston: The New England News Company (distributors to the trade), 1910—pp. vi, 240. The writer of this unique volume has for some years been interested in social and industrial problems. The present work, embodying the latest views of the author with respect to the protection and safeguarding of "the people," contains the articles of incorporation, by-laws, etc., of a World Corporation which is designed to displace all government and which, in the opinion of the writer, will combine in one brotherhood all the people of the earth for one common purpose—the absorption of all industry into one corporate body. The scheme is concisely stated in the opening chapter:—"Promoters are the true socialists of this generation, the actual builders of a coöperative system which is eliminating competition, and in a practical business way reaching results which socialists have vainly tried to attain through legislation and agitation for centuries. To complete the industrial evolution, and establish a system of equity, only requires a belief in the truths herein stated—and the support of 'World Corporation.'"

*Shell-Fish Industries.* By James L. Kellogg. New York: Henry Holt & Co., 1910—pp. xvi, 361. This book appears in the well-known American Nature Series of the above-mentioned publishers. It was prepared primarily for three groups of readers—those who consume the food mollusks, those who are now or later may become interested in their culture, and those who have an interest in such biological problems as are connected with their artificial control. Considering the mixed audience which the author was obliged to cater to, he is to be congratulated upon the excellence of the volume. The first chapters seem more laborious and somewhat more formidable than those which follow, and they contain a discussion of such facts



of anatomy, development, and physiology as are essential to a clear understanding of the subsequent chapters. Considerable space is given over to the treatment of the oyster under a diversity of topics, chief among which are its culture in Europe and Japan, the conditions governing growth, the rearing from the egg, culture in America, preparation for the market, natural enemies, relation to disease, and the various oyster fields of the United States. The chapters on clam culture, and the life history and conditions governing the growth of the soft clam, contain an account of the author's own investigations covering a period of nearly a dozen years. The work concludes with an interesting chapter on the scallops. The volume is liberally illustrated by half-tones and drawings, of which practically all of the latter were drawn from the author's own preparations.

*Select List of References on Sugar, Chiefly in its Economic Aspects.* Compiled under the Direction of Hermann Henry Bernard Meyer. Washington: Government Printing Office, 1910—pp. 238. As the title indicates, this extensive classified bibliography is not exhaustive. It includes all of the great mass of material on sugar which is to be found in the Library of Congress, as also a few of the more important German and other works not to be found in this collection. The material has been arranged under three main headings, entitled General and Economic, Agriculture, and Chemistry and Manufacture. In addition, there are sections containing the literature before 1850, the government publications of the United States and Great Britain, the articles in consular reports, and in periodicals.

*The Story of Sugar.* By George Thomas Surface. New York and London: D. Appleton & Co., 1910—pp. xiv, 238. Within recent years, comprehensive and scholarly studies of several of the great basic industries have been made by American writers. A larger number of shorter treatises dealing with a great variety of commodities also have appeared. In the present volume the author has made a commendable attempt to present in concise and readable form the essential data respecting the evolution of the world's sugar industry. Although the work

was designed primarily to suit the taste of the general reader, it probably will be found useful, for reference purposes at least, in secondary schools and colleges in such courses as economic or commercial geography.

*A Congressional History of Railways in the United States.* Vol. II. The Railway in Congress: 1850-1887. By Lewis H. Haney. (Reprinted from the *Bulletin of the University of Wisconsin*, Economics and Political Science Series, Vol. 6, No. 1.) Madison, Wis.: Democrat Printing Company, State Printer, 1910—pp. 335. The first volume of this history dealt with "Congress and the Railway down to 1850." The present volume is subdivided into three books, of which the first deals with the extension of aid during the earlier part of the period; the second, specifically with the Pacific roads and the land grant policy of encouraging their construction; the third, with regulation of the railways. Occasional summarizing chapters contain discussions which are of interest to the general reader. The main body of the work is given up to a detailed description of the relations of Congress and the railways, of legislation passed, legislation proposed, recommendations of committees, etc. The volume should serve as a valuable reference work.

*Transportation by Water in the United States.* Report of the Commissioner of Corporations, Department of Commerce and Labor. Washington: Government Printing Office, 1910—Part III, pp. xxi, 436. The exhaustive investigation of water transportation in the United States which is being carried on under the direction of the Federal Commissioner of Corporations, as also the two volumes of the study which previously have appeared, have been commented upon in a previous issue (*YALE REVIEW*, February, 1910). The present volume is devoted to a consideration of water terminals, and was prepared largely by Mr. B. J. Ramage, one of the assistants of the Commissioner of Corporations. An important feature of the work is a detailed study of each of the more important ports, with reference to physical condition, harbor organization, and terminal charges.



*Organisationsformen der Eisenindustrie und der Textilindustrie in England und Amerika.* By Theodor Vogelstein. Band I. Leipzig: Verlag von Duncker & Humbolt, 1910—pp. xvi, 277. The author in this work sets out to discover and distinguish the factors that make for centralization or decentralization of the various processes of production, for free competition or monopolistic concentration, for small or large scale production; all in reference to the iron and textile industries of the countries treated. The four chapters of this first volume furnish the material, in the form of historical sketches and well-chosen statistical tables, for the theory he is to develop in Vol. II. Vol. I is the result of elaborate personal investigations; the subject matter is convincingly and readably presented.

*The History of the Telephone.* By Herbert N. Casson. Chicago: A. C. McClurg & Co., 1910—pp. vii, 315. \$1.50 net. This book sets forth what is probably the most accurate and authoritative statement of the origin and development of this invention that has yet appeared. It has the interest that naturally accompanies the story of any achievement that powerfully and dramatically alters old customs, and business and social methods. It is fortunate that the history of this invention should have been written while the men who brought about such surprising results are still alive to give the details of how it was accomplished.

*The Territorial Governors of the Old Northwest.* A Study in Territorial Administration. By Dwight G. McCarty. Iowa City: State Historical Society of Iowa, 1910—pp. 210. In the belief that the governor "has been the center and mainstay of territorial government in the United States," this book has been written. It is an attempt "to present an outline history of territorial government in the Old Northwest from the time of American acquisition down to the admission of Wisconsin into the Union as a State as revealed especially in the activities of the Territorial Governors." The notes and references are grouped together in thirty pages at the back of the book, which makes the reading of the main text more enjoyable, but brings out con-

spicuously the limitations of the material used. The author has made a diligent but not exhaustive study of the sources, and the work is in consequence quite irregular, sometimes showing a comprehensive grasp and clear insight into conditions, at other times neglecting quite important elements. The chapters upon Governor St. Clair and the Northwest Territory, Governor Harrison and the Indiana Territory, Governor Edwards and the Illinois Territory, and the chapters upon the governors of Michigan and Wisconsin, are interesting reading and contain some new points that have not previously appeared in secondary works.

*The French Revolution. A Short History.* By R. M. Johnston. New York: Henry Holt & Co., 1909—pp. vii, 283. \$1.25 net. Of recent years there has been issued a number of good short histories of the French Revolution, among which this will deservedly rank high; it is concise, well arranged, and more than any of the others, presents the results of the most recent scholarship. But in the mind of the reviewer, it falls short in precisely that respect which constitutes the chief justification of a short account of that great movement. Such a work makes its chief appeal either to the general reader or to the elementary student, and each of these wants to know, first of all, what happened,—he desires a fairly complete account of actual events, well arranged, and with just enough explanation to make clear the general relation of cause and effect. It is a mistake to make casual mention of things in a way that presupposes a previous knowledge, as Mr. Johnston so often does; it is a mistake to deal so much with theories and generalities, without a description of the concrete facts which underlie them. A distinctive excellence of the book, however, lies in the clear account which it gives of the economic phenomena of the Revolution.

*The Great Design of Henry IV, from the Memoirs of the Duke of Sully; and the United States of Europe.* By Edward Everett Hale. With an introduction by Edwin D. Mead. Boston: Ginn & Co., published for the International School of Peace, 1909—pp. xxi, 99. 50 cents. If the so-called Great Design for the federation of Europe ever entered the head of Henry IV,



it was probably in one of those playful moments when he worked off his superabundant mental energy at the expense of his sedate counsellors; its elaboration was undoubtedly the work of the Duke of Sully after that somewhat dull old statesman had been cut off from all connection with practical politics. It is interesting as a curious bit of political speculation, but there is an element of humor in its use as peace propaganda; surely both Mr. Mead and the Rev. Mr. Hale must have seen that the author of the Design, whoever he may have been, contemplated a federation under the presidency of France,—and such a supremacy and the subsequent maintenance of peace under it could be secured only by military conquest. As a matter of fact, Henry IV was assassinated on his way to make a last inspection of the great arsenal which the Duke of Sully had equipped for him; the war was to begin immediately.

*An Introduction to the Sources relating to the Germanic Invasions.* By Carlton Huntley Hayes. New York: Columbia University Studies in History, Economics and Public Law, Vol. xxxiii, No. 3, 1909—pp. 229. The author modestly calls this a "slender review" of "the most important resources relating to the Germans, from Caesar's Commentaries and Plutarch's Life of Marius down to Paul the Deacon's History of the Lombards, together with extracts, translated into English, illustrative of their general character and relative merit." He limits his review to sources that are exclusively Latin or Greek, and purposely omits documentary and monumental material; and one is surprised to see how little this omission, which at first would seem to be fatal, detracts from the particular kind of usefulness which the author has striven to give his book. It is essentially an introductory treatise, and serves its purpose extremely well; and in addition, it supplements the larger bibliographies of the medieval period by its discussion of the sources earlier than those which they deal with. And it is interesting to a degree unusual in manuals of this character.

*An Outline History of the Roman Empire 44 B. C. to 378 A. D.* By William Stearns Davis. New York: The Macmillan

Company, 1909—pp. ix, 222. The author designed this little book to serve as an introduction to the school and college manuals of medieval history; and as such an introduction, it will answer the purpose very well. It is readable, and develops in a broad and general way those facts of imperial history which are necessary as a preliminary background to the story of the Middle Ages. Beyond that, little need be said of it. If one desires to really know something about the Roman Empire, and can read but one volume of moderate compass, he will prefer the work by H. Stuart Jones in the "Story of the Nations."

*Money and Banking.* By Earl Dean Howard, in collaboration with Joseph French Johnson. New York: Alexander Hamilton Institute, 1910—pp. xxiii, 495. This book is Volume V in the series on "Modern Business" under the general editorship of Professor Johnson. Like the other volumes in the series, it aims to present in popular form economic facts and principles. Part I (pp. 1-192) states the principles of money, with illustrations mainly from American monetary history. Part II (pp. 193-428) gives the principles of credit and banking and an account of the banking history of the United States, together with one short chapter on Canadian banking and very brief accounts of the Bank of England, the Bank of France, and the Imperial Bank of Germany. At the end of the book is a list of some five hundred "quiz questions" on the text. The book is clearly and interestingly written. The statement of principles is in the main sound, but a frequent tendency to superficial treatment is not to be overlooked. On the whole the book should prove interesting and valuable to those readers whose tastes do not incline them to the more profound and scientific works.

*Banking Practice and Foreign Exchange.* Part I, Banking Practice. By Howard McNayr Jefferson. Part II, Foreign Exchange. By Franklin Escher. New York: Alexander Hamilton Institute, 1910—pp. xiv, 407. This book is Volume VI in the series on "Modern Business." Part I (pp. 1-307) makes up the bulk of the volume. It is distinctly practical and technical in character, and consists of a minute account of the



details of banking practice, with descriptions of the various departments of a large bank and copies of the multitudinous forms and records used in the business. Part II (pp. 308-388) is devoted to foreign exchange. It is likewise practical in character. It contains a very clear and interesting account of the actual way in which foreign exchange is used in connection with the import and export of goods, the international security market, and the international flow of gold. At the end of the book is a list of "quiz questions" on the text.

*Elements of Foreign Exchange.* By Franklin Escher. New York: The Bankers Publishing Company, 1910—pp. viii, 160. Since the publication of Goschen's book, a good many years ago, few satisfactory accounts of the intricate topic of foreign exchange have appeared; and the present little volume, termed in its sub-title "a foreign exchange primer," is a very welcome contribution to the subject. In the field of theory it is brief, but clear as far as it goes; in the description of current practice it is full of interesting and important information. Economists will be grateful for this authoritative account of the technique of exchange operations.

*The Shifting and Incidence of Taxation.* By Edwin R. A. Seligman. Third edition. New York: The Columbia University Press, 1910—pp. xii, 427. \$3.00 net. Professor Seligman's works on taxation occupy a well-deserved position of authority, and a new edition of "The Incidence of Taxation" is therefore an event of importance. The last revision of this book occurred eleven years ago. The present volume follows the same plan as the earlier editions, but has been thoroughly revised, enlarged, and brought down to date. Important changes have been made in the introductory chapter, where the matter of terminology is more thoroughly treated than before. Changes and additions appear also in the chapters treating of the taxes on agricultural land and city real estate, of mortgage taxation, of the recent stock- and produce-exchange taxes, etc. The size of the book has been increased by nearly one hundred pages.

*Impôts Directs et Indirects sur le Revenu.* Par J. Ingenbleek. Instituts Solvay: Etudes Sociales. Bruxelles et Leipzig: Misch & Thron, 1908—pp. 8, 520. Having shown that the personal tax system (contribution personnelle) of Belgium is obsolete and unjust, the author raises the question whether the remedy should be the introduction of an income tax or merely the revision of the present personal taxes. In order to throw light on this question he describes the Prussian and British income taxes, as representing the two types of income tax, the one assessed on the income as a whole, the other assessed by schedules. He concludes that neither kind of income tax is so well suited to the peculiar needs of Belgium as her present system of taxes based on expenditures, which he regards as an "indirect income tax." He then presents a plan for reforming the Belgium personal taxes while retaining their essential character. The book contains an extensive bibliography of works on the income tax.

*National and Local Finance.* By J. Watson Grice. London: P. S. King & Son, 1910—pp. xxiv, 404. 10s. 6d. net. As described in its sub-title, this book contains "a review of the relations between the central and local authorities in England, France, Belgium, and Prussia, during the nineteenth century." It gives an account of the respective functions of the national and local governments in each country, of their respective sources of revenue, and of the relations between the different grades of government, as, for example, the supervision and control of local expenditure by the central authorities and the assistance of local needs by means of grants from the national revenue. It is a careful and scholarly work. The author's close adherence to minute technical details will hardly commend the book to the general reader, but this very quality will make it valuable as a reference work for the student.

*People's Banks. A Record of Social and Economic Success.* By Henry W. Wolff. Third edition. London: P. S. King & Son, 1910—pp. xvi, 587. 6s. net. The first edition of "People's Banks" appeared in 1893, followed in 1897 by the second edition, and now after thirteen years by a third edition. The writer is



well known as an enthusiastic advocate of coöperative credit and the author of numerous works on the subject. In the present volume the matter of the earlier editions has been quite generally rewritten and extensive additions have been made, as required by recent progress in the field of coöperative banking. The book presents the principles underlying people's banks, the advantages to be gained therefrom, and the history of the movement in the several countries which have tried the experiment.

*The Meaning of Social Science.* By Albion W. Small. University of Chicago Press, 1910—pp. vii, 309. This book contains a series of lectures to graduate students, "printed just as they were delivered." They treat of the unity and disunity of the social sciences, seek for a "center of orientation" and discuss in order the descriptive, analytical, evaluating, and constructive phases of social science. The book is written with the usual freshness and vigor of the author, and insists upon a unity and concentration in the social sciences of which they are in great need.

*Principles of Economics.* By Edwin R. A. Seligman. New York: Longmans, Green & Co., 1909—pp. lii, 710. This well-known work, first published in 1905, now appears in a fourth edition which is larger by about one hundred pages than the original volume. The increase in size is due to various changes and additions which have been made from time to time, notably the expansion and recasting of the chapters on money and banking in the preparation of the third edition. In the present volume, there has been a rewriting of the introductory matter; the bibliographies at the beginning of the chapters have been duly revised, and the statistical material and charts have, wherever possible, been brought down to date.

*The Establishment of the National Banking System.* By William Walker Swanson. Kingston, Canada: The Jackson Press, 1910—pp. 117. This book describes the various banking systems which preceded the national banking system in the United States, gives an account of the crisis of 1860 and of the

suspension of specie payments and the issue of United States notes, and closes with two chapters on the debate in Congress over the passage of the original National Bank Act of 1863 and the revision of 1864. It cannot be credited with having added greatly to present knowledge of the subject.

*Slavery as an Industrial System.* (Ethnological Researches.) By Dr. H. J. Nieboer. (2d revised edition.) The Hague: Nijhoff, 1910—pp. xx, 474. The author, working in close association with Professor Steinmetz, has bettered his book, originally published a decade ago, by taking account of criticisms and by the use of data not available in 1900. For the ethnologist or sociologist this treatise is the most considerable on the subject.



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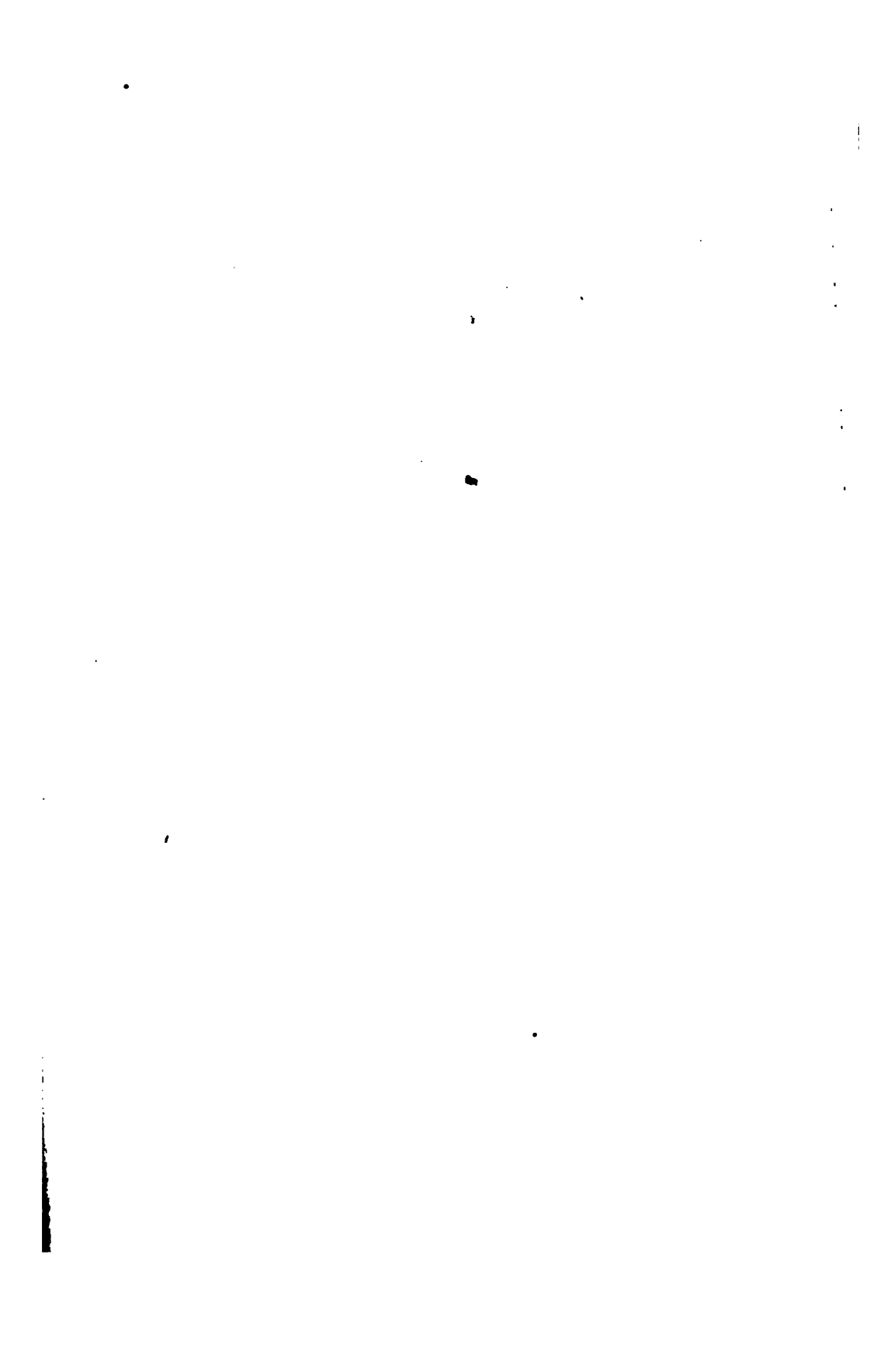
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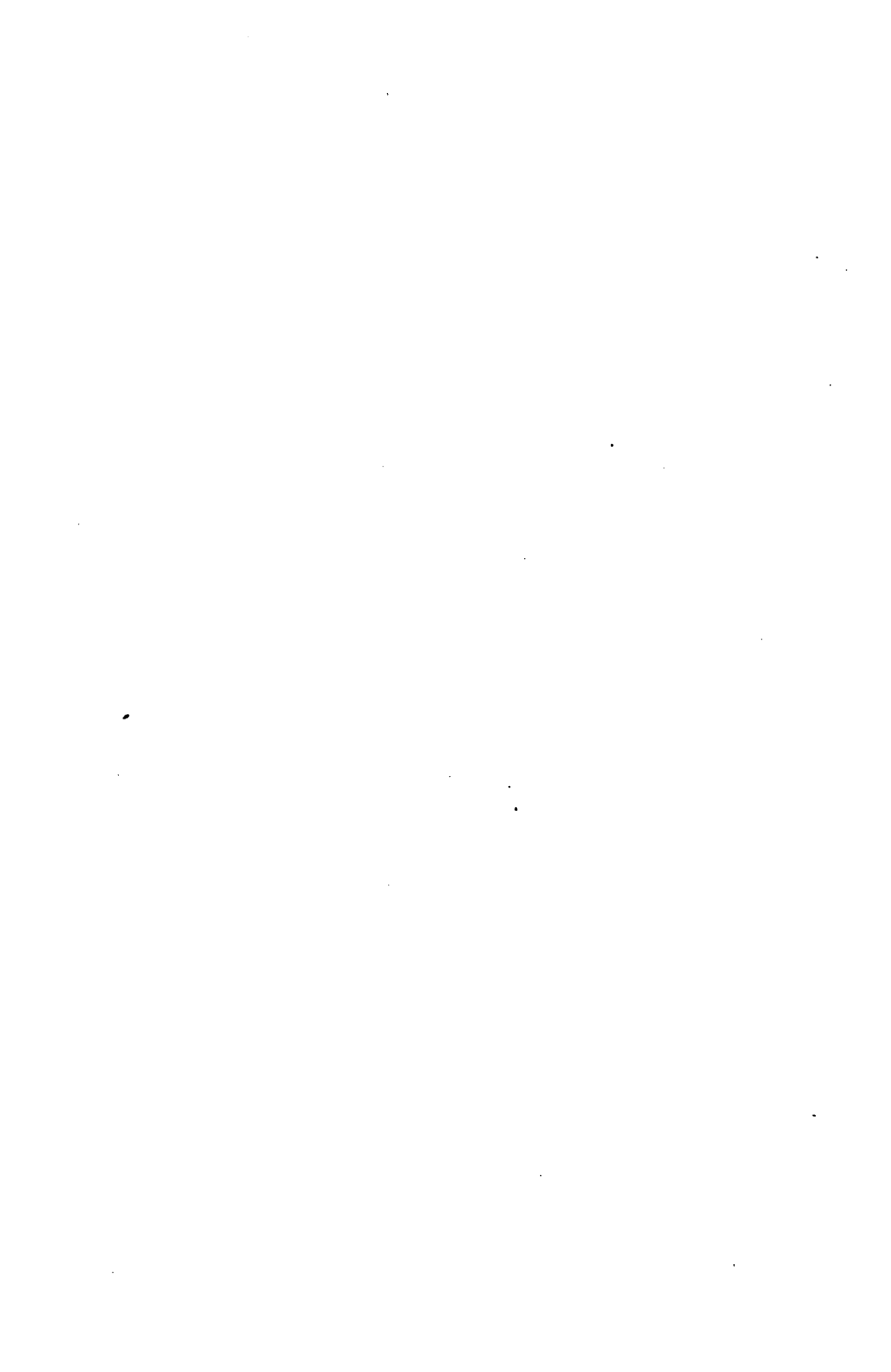
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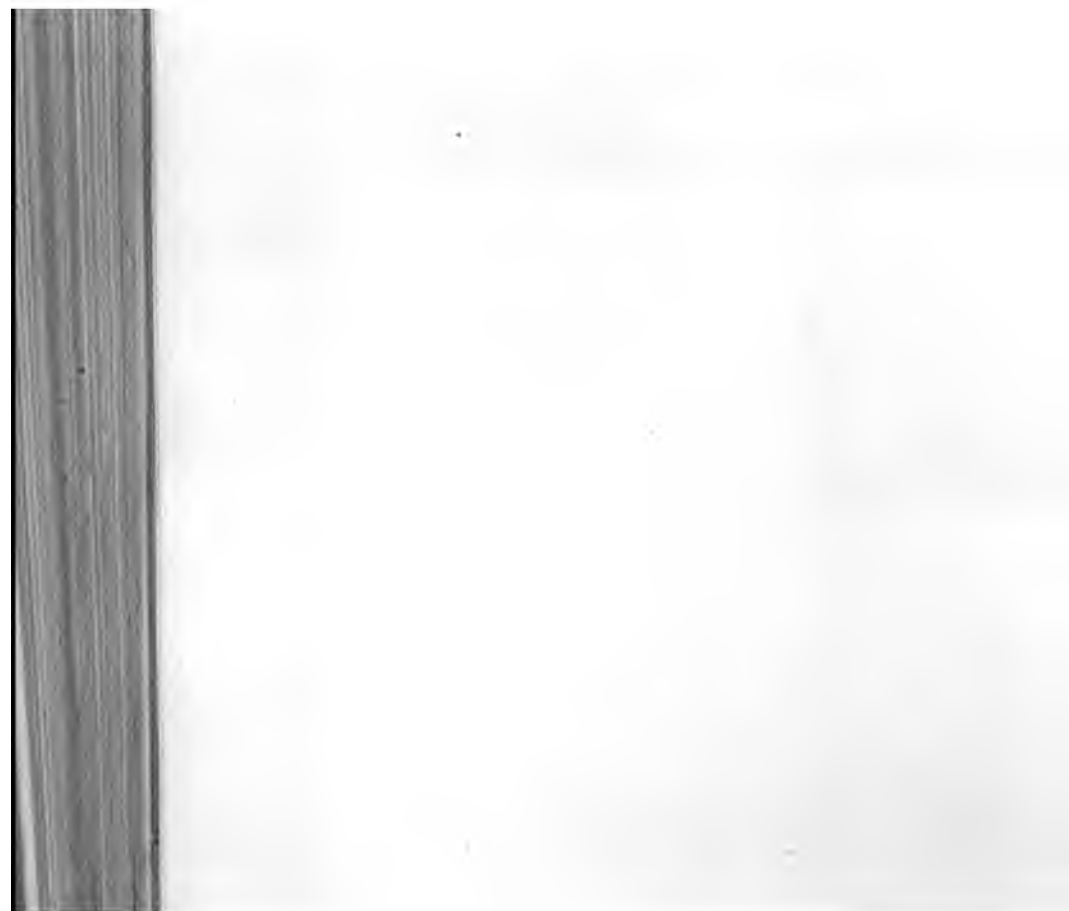






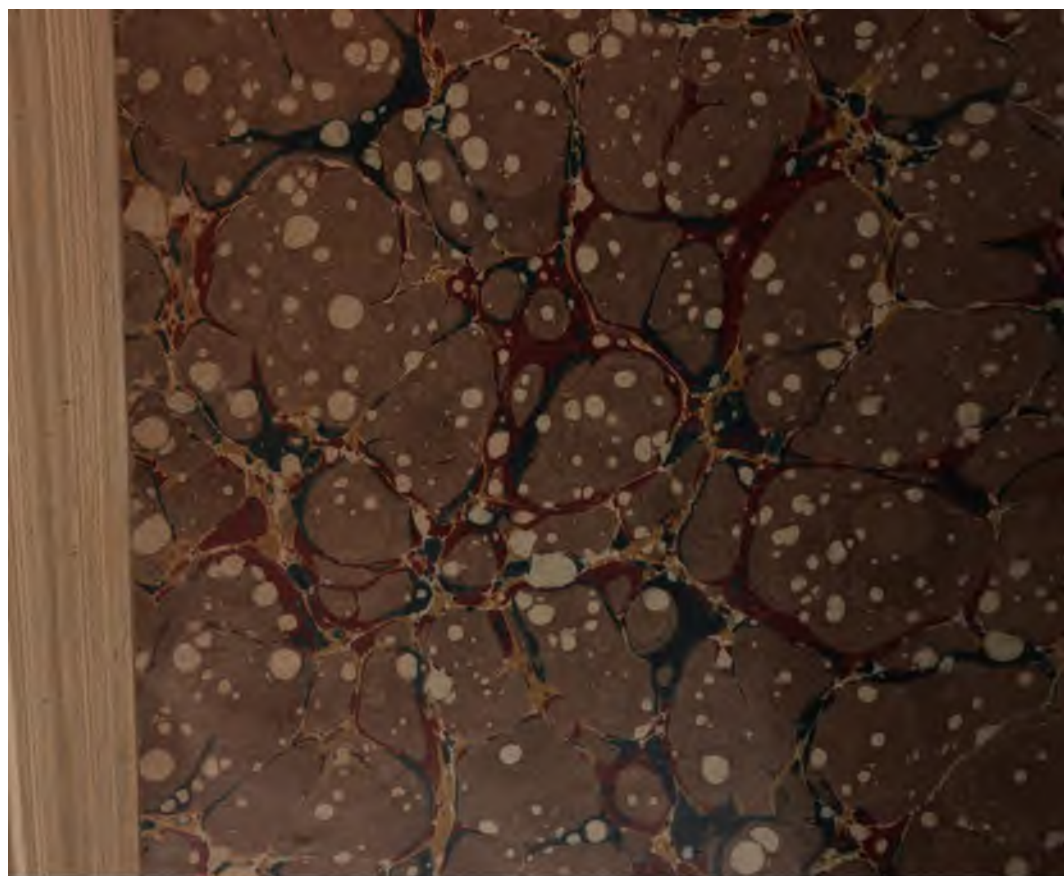












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